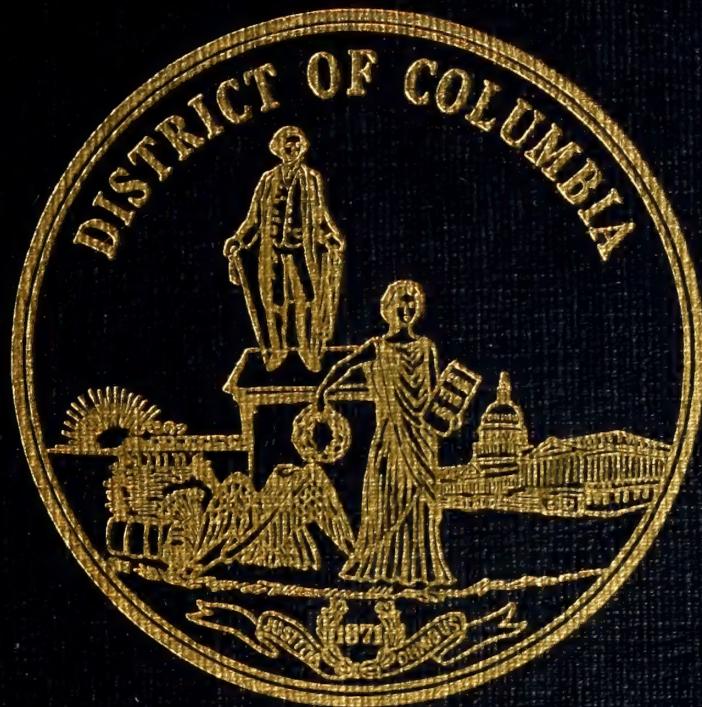


District of Columbia Code

1951 EDITION



SUPPLEMENT VIII



DISTRICT OF COLUMBIA CODE

OFFICE OF LAW REVISION COUNSEL

SUPPLEMENT III

LAW 8-5-1975

NOTICE TO DISTRICT OF COLUMBIA



- Part I. General Provisions
- Part II. Administration
- Part III. Judicial Branch
- Part IV. Executive Branch
- Part V. Legislative Branch

DISTRICT OF COLUMBIA CODE

1951 EDITION

SUPPLEMENT VIII

LAWS—January 3, 1951, to January 5, 1960

NOTES TO DECISIONS—January 3, 1951, to July 31, 1959

Prepared and Published Under Authority of Sections 202, 203 of Title 1, United States Code,
by the Committee on the Judiciary of the House of Representatives



Part I.—Government of the District

Part II.—Civil Procedure

Part III.—Probate Law and Procedure

Part IV.—Criminal Law and Procedure

Part V.—General Statutes

TITLES 1-49
and
TABLES AND INDEX

DISTRICT OF COLUMBIA CODE

1951 EDITION

SUPPLEMENT VIII

LAW—January 2, 1951, to January 2, 1953

NOTES TO DECISIONS—January 2, 1951, to July 31, 1953

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Part I—Government of the District

Part II—Civil Procedure

Part III—Probate Law and Procedure

Part IV—Criminal Law and Procedure

Part V—General Statutes

TITLE 1

and

TITLE 2

COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES

UNDER WHOSE DIRECTION THIS SUPPLEMENT HAS BEEN PREPARED

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TITLES OF DISTRICT OF COLUMBIA CODE

PART I—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

Title

1. Administration.
2. District Boards and Commissions.
3. Board of Public Welfare.
4. Police and Fire Departments.
5. Building Lines and Regulations.

Title

6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

PART II—CIVIL PROCEDURE

Title

11. Judiciary and Jurisdiction.
12. Right to Remedy—Conditions Affecting.
13. Process, Pleadings, and Parties.
14. Proof.

Title

15. Judgments and Execution of Judicial Powers.
16. Special Remedies and Proceedings.
17. Review.

PART III—PROBATE LAW AND PROCEDURE

Title

18. Decedents Estates and Their Distribution.
19. Wills.

Title

20. Administrators, Executors, and Collectors.
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PART IV—CRIMINAL LAW AND PROCEDURE

Title

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23. Criminal Procedure.

Title

24. Prisoners and Their Treatment.

PART V—GENERAL STATUTES

Title

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37. Libraries.
38. Liens.
39. Military.
40. Motor Vehicles.
41. Partnerships.
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43. Public Utilities.
44. Railroads and Other Carriers.
45. Real Property.
46. Social Security.
47. Taxation and Fiscal Affairs.
48. Trade-Marks and Trade Names.
49. Compilation and Construction of Code.

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PREFACE

This eighth cumulative supplement to the District of Columbia Code, containing the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia (except such laws as are of application in the District of Columbia by reason of being general and permanent laws of the United States), enacted during the Eighty-second, Eighty-third, Eighty-fourth, Eighty-fifth and the first session of the Eighty-sixth Congresses, has been prepared and published by the Committee on the Judiciary of the House of Representatives under authority of Sections 202, 203 of Title 1, United States Code. This supplement, together with the 1951 edition, contains the laws of the District of Columbia in force on January 5, 1960.

The 1951 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to July 31, 1959, in this supplement.

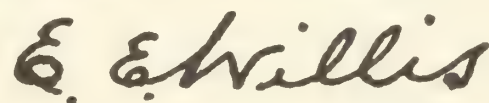
The Committee gratefully acknowledges the assistance of Dr. Charles J. Zinn, law revision counsel of the Committee, and his staff, and of all others who have helped in the preparation of this supplement.

The Committee again invites suggestions and criticisms by users of the Code.

EMANUEL CELLER

M. C.

Chairman,
Committee on the Judiciary.



M. C.

Chairman,
Subcommittee No. 3,
Committee on the Judiciary.

WASHINGTON, D. C.
December 1, 1959.

DISTRICT OF COLUMBIA CODE
1951 Edition

SUPPLEMENT VIII

LAWS—January 3, 1951, to January 5, 1960
NOTES TO DECISIONS—January 3, 1951, to
July 31, 1959

THE CODE OF THE DISTRICT OF COLUMBIA

PART I

GOVERNMENT OF DISTRICT

[*Judiciary Excepted*]

TITLE 1.—ADMINISTRATION

Chap.	Sec.
10. National Capital Planning Commission....	1-1001
11. Elections.....	1-1101
12. Presidential Inaugural Ceremonies.....	1-1201

Chapter 1.—CREATION OF DISTRICT—GENERAL PROVISIONS

§ 1-102 [20:2]. District created body corporate for municipal purposes.

TRANSFER OF FUNCTIONS

Reorganization Order No. 29 of the Board of Commissioners, dated April 14, 1953, established the Procurement Office in the Department of General Administration and abolished the previous existing Purchasing Division, the Contract and Bond Section of the Department of General Administration, the Automobile Board and the Contract Board. The order established the Contract Appeals Board to hear and decide appeals arising out of contract administration; provided for the appointment of District Contracting Officers, and established the Contract Advisory Committee to assist and advise contracting officers on all contracting matters. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title I.

PRESENT ORGANIC ACT, § 2

Within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United State Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars per annum. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall

be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia, or which positions occupied or to be occupied by such officers and employees, shall hereafter be bonded for the faithful discharge of the duties of such officers and employees or of such positions, and to fix the penalty or penalties of any such bond: *Provided*; That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of the act of Congress entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and nine, and for other purposes," approved August 5, 1909 (36 Stat. 118, 125 (U. S. C., title 6, § 14)), relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia. (June 11, 1878, 20 Stat. 102, ch. 180, § 2; June 28, 1935, 49 Stat. 430, ch. 332, § 1; July 7, 1955, 69 Stat. 281, ch. 280, § 1.)

ORGANIC ACT AMENDMENTS

1955—Act of July 7, 1955, amended so much of section 2 of the Organic Act of June 11, 1878 (20 Stat. 103, ch. 180), as added by the first section of the act of June 28, 1935 (49 Stat. 430), as precedes the proviso in said last paragraph to read as above set out.

NOTES TO DECISIONS

PROPRIETARY FUNCTION

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia v. Walter C. Green* (1955, 96 U. S. App. D. C. 20, 223 F. 2d 312).

WAIVER OF IMMUNITY

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Edwin M. Adams v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 765).

§ 1-103 [20:3]. Commissioners made officers of corporation.

NOTES TO DECISIONS

PROPRIETARY FUNCTION

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its propriety obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the

market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia v. Walter C. Green* (1955, 96 U. S. App. D. C. 20, 223 F. 2d 312).

§ 1-107. "Limits of city of Washington" defined—Georgetown abolished—General laws of Washington extended to former Georgetown.

NOTES TO DECISIONS

BOWLING ALLEY A PLACE OF "PUBLIC AMUSEMENT"

A bowling alley was a place of "public amusement" within act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind from making any distinction on account of race or color. *Central Amusement Co., Inc. v. District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

DUE PROCESS

Fact that act adopted by corporation of city of Washington prohibiting persons who have obtained license for conducting place of public amusement of any kind from making any distinction on account of race or color was applicable only to that part of the District of Columbia formerly included in the cities of Washington and Georgetown, did not render act invalid as violation of due process. *Central Amusement Co., Inc. v. District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

"PERSONS" APPLIES TO CORPORATIONS

The word "persons", as used in act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind, from making any distinction on account of race or color, applies to corporations as well as natural persons. *Central Amusement Co., Inc. v. District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.

- 1-204a. Compensation of Engineer member of Commission.
- 1-204b. Compensation of Commissioners
- 1-213. Bonds of officers and employees.
- 1-213a. Commissioners authorized to obtain surety bonds.
- 1-213b. Commissioners bonds in lieu of employee bond.
- 1-239. Illustrations in reports prohibited, unless authorized by Commissioners
- 1-241. Repealed.
- 1-243a. Leases for rentals limited to 5 years.
- 1-247. Repealed
- 1-251. Authority to grant additional compensation.
- 1-252. Authority to fix certain licensing and registration fees.
- 1-253. Same; Increase or decrease of fees.
- 1-254. Commissioners authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of Civil Service Retirement Act.
- 1-255. Applicability to various boards, commissions and committees.
- 1-256. Refund of unearned fees.
- 1-257. Commissioners authorized to change and fix licensing periods.
- 1-258. Applicability of sections 1-254 to 1-258 to boards covered by Reorganization Plan No. 5 of 1952.
- 1-259. Appropriation for administration of laws mentioned in section 1-255.
- 1-260. Holidays for District employees—regulations.
- 1-261. Authority for transporting children of certain employees in District-owned vehicles.
- 1-262. Reception by Commissioners of eminent persons—Appropriation authorized

§ 1-204 [20:15]. Superseded.

COMPILER'S NOTE

This section is superseded by section 3 of the act of July 25, 1958, set out as section 1-204a.

§ 1-204a. Compensation of Engineer member of Commission.

The Commissioner detailed from the Corps of Engineers of the United States Army shall receive an annual compensation which, when added to any compensation he receives as an officer of the United States Army, will equal the compensation authorized for a Commissioner by section 1-204b. (July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 3.)

EFFECTIVE DATE

Section 4 (c) of the act of July 25, 1958, cited to text, provides:

Sections 2 and 3, inclusive, of this Act shall take effect on the first day of the first month which begins after the date of enactment of this Act.

§ 1-204b. Compensation of Commissioners.

Except as provided by section 1-204a, the compensation of the Commissioners of the District of Columbia shall be at the rate of \$19,000 each per annum. (July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 2.)

EFFECTIVE DATE

Section 4 (c) of the act of July 25, 1958, cited to text, provides:

Sections 2 and 3, inclusive, of this Act shall take effect on the first day of the first month which begins after the date of enactment of this Act.

§ 1-213. Bonds of officers and employees.

The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia, or which positions occupied or to be occupied by such officers and employees, shall hereafter be bonded for the faithful discharge of the duties of such officers and employees or of such positions, and to fix the penalty or penalties of any such bond; *Provided*, That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of U. S. Code, Title 6, section 14, relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia. (June 28, 1935, 49 Stat. 430, ch. 332, § 1; July 7, 1955, 69 Stat. 281, ch. 280, § 1.)

AMENDMENTS

1955—Act of July 7 1955, revised the language preceding the proviso

§ 1-213a. Commissioners authorized to obtain surety bonds.

The Commissioners of the District of Columbia are authorized to obtain blanket, position schedule, or other type of surety bond covering their civilian officers and employees required by law or administrative ruling to be bonded. Each bond shall be of the most suitable type available for the number

and type of personnel required to be bonded, and shall be conditioned upon the faithful performance of the duties of the persons so bonded, and the term "faithful performance of the duties" shall be deemed to include the proper accounting for all moneys or property received by virtue of the bonded persons' positions or employment and all responsibilities and accountabilities imposed by statute or regulation issued pursuant thereto. The bond premium may cover a period not exceeding three years and may be paid in advance from funds available for administrative expenses when the contract is made or continued. If the initial or subsequent premium cost exceeds \$500 for any bond procured under authority of this section, advertisement for bids shall be required therefor and procurement shall be made from the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the District of Columbia, price and other factors considered. (July 7, 1955, 69 Stat. 281, ch. 280, § 2.)

§ 1-213b. Commissioners bonds in lieu of employee bond.

Whenever any officer or employee of the District of Columbia, as a prerequisite to entering upon the duties of his office or employment, or as a condition to his holding such office or employment is required by any provision of law or regulation to execute or furnish bond, notwithstanding such provision of law, if any bond obtained by the Commissioners pursuant to the authority contained in this Act covers such officer or employee, or covers the position of such officer or employee, in the amount and for such period as may be prescribed by such provision of law, such bond obtained by the Commissioners shall be in lieu of the bond required to be executed or furnished by such officer or employee. (July 7, 1955, 69 Stat. 281, ch. 280, § 3.)

§ 1-214 [20:9a]. Secretary of Board of Commissioners authorized to execute certain documents.

TRANSFER OF FUNCTIONS

Reorganization Order No. 41 of the Board of Commissioners dated June 23, 1953, established as part of the Executive Office of the Board of Commissioners under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The order described the purpose and functions of the Office of Secretary, and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new office; and that the previously existing Office of the Secretary be abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 1-216 [20:28]. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

CROSS REFERENCE

Reorganization of municipal agencies, see Title 1.—Administration, Appendix.

REORGANIZATION OF MUNICIPAL AGENCIES

Act of June 20, 1949, ch. 226, 63 Stat. 203, as amended, (sections 133z to 133z-15 of Title 5, United States Code) provides for the reorganization of Government agencies including any and all parts of the municipal government

of the District of Columbia by means of "Reorganization Plans" prepared by the President and transmitted to Congress for its approval. The underlying purpose of the Act is to bring about, through reorganization plans, such changes in the organization of executive agencies as will make them more manageable and promote better coordination, economy and efficiency in those agencies in the transaction of public business.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952, established in the Government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a director. The order transferred to the Director of General Administration all of the functions and positions of the District Personnel Board. Reorganization Order No. 21 of the Board dated November 20, 1952, established a Personnel Office in the Department of General Administration and provided that the functions of that office would encompass all the personnel functions previously vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 of 1952. The plan and the orders are set out in the appendix to Title 1.

Reorganization Order No. 40 of the Board of Commissioners dated June 23, 1953, established the Executive Office of the Board of Commissioners under the direction and control of the Board of Commissioners to provide special and clerical assistance to the Board. The order transferred to the new board all of the functions and positions of the previously existing Executive Office of the Board of Commissioners which the order abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

LAWFUL REMOVAL

Where heavy truck driver in District government was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him at which he was represented by counsel of his own choice, who was permitted to call and examine witnesses under oath and to introduce testimony, and it was clear that only rules and regulations relied upon by employee were never adopted or promulgated, removal was accomplished lawfully and he was not entitled to recover wages for time he was in nonpay status. *C. E. Washington v. Government of District of Columbia* (D.C. Mun. App. 1959, 152 A. 2d 191)

§ 1-218 [20:9]. Commissioners—Executive power vested in.

CROSS REFERENCE

Reorganization of municipal agencies, see Title 1.—Administration, Appendix.

REORGANIZATION OF MUNICIPAL AGENCIES

Act of June 20, 1949, ch. 226, 63 Stat. 203, as amended (sections 133z to 133z-15 of Title 5, United States Code) provides for the reorganization of Government agencies including any and all parts of the municipal government of the District of Columbia by means of "Reorganization Plans" prepared by the President and transmitted to Congress for its approval. The underlying purpose of the Act is to bring about through reorganization plans, such changes in the organization of executive agencies as will make them more manageable and promote better coordination, economy and efficiency in those agencies in the transaction of public business.

NOTES TO DECISIONS

PROPRIETARY FUNCTION

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there

as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia v. Walter C. Green* (1955, 96 U. S. App. D. C. 20, 223 F. 2d 312).

§ 1-228 [20:36]. Building regulations.

NOTES TO DECISIONS

APPROVAL OF COMMISSIONERS

Where department of building inspection had issued raze permit authorizing demolition of demised buildings and had issued a building permit authorizing erection of shed on the leveled lot, which was to be used as a parking lot, there was sufficient approval of parking lot project plans by District of Columbia commissioners as to entitle landlord to possession of demised premises under District of Columbia Emergency Rent Act. *Ancher v. Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

§ 1-229 [20:37]. Regulations for construction and operation of elevators—Penalty.

TRANSFER OF FUNCTIONS

See note under section 1-246 concerning the Department of Licenses and Inspections.

§ 1-237 [20:59]. Investigations of municipal matters by Commissioners—Authority to administer oaths.

After July 1, 1902, the several provisions of sections 4-601 to 4-603 shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Commissioners of the District of Columbia, as well as to the proceedings before the trial boards named in said sections; and said Commissioners are, and each of them is hereby, authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid. (July 1, 1902, 32 Stat. 591, ch. 1352.)

NOTES TO DECISIONS

ABUSE OF AUTHORITY

Where Board of Commissioners for the District of Columbia issued a directive requiring all police officers to answer lengthy questionnaire of Senate District Crime Investigating Committee, and there was no clear showing of an abuse of lawful authority or wrongful usurpation of power by Board, action would not be enjoined although Board had no authority to issue such a directive under governing statutes. *Robert J. Barrett v. J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (1955, 134 F. Supp. 106).

POWERS OF BOARD

Board of Commissioners for the District of Columbia is a creature of statute and derives its power from expressed statutory authority which is in the nature of a restraining rather than an enabling act. *Robert J. Barrett v. J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (1955, 134 F. Supp. 106).

§ 1-238 [20:10]. Annual report to Congress.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952, established in the Government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a director. The order transferred to the Director of General Administration all of the functions and positions of the Budget Office. Reorganization Order No. 24 established in the Department of General Administration a Budget Office headed by a Budget Officer. The preparation of the annual report referred to in section 1-238 was included among the functions assigned to the Budget Office by Reorganization Order No. 24. These orders were issued pursuant to Reorganization Plan No.

5 of 1952. The orders and plan are set out in the appendix to this title.

§ 1-239. Illustrations in reports prohibited, unless authorized by Commissioners.

Hereafter no department, board, office, or agency of the government of the District of Columbia shall include any illustration in any annual report prepared by it unless such illustration be authorized under order or regulation approved by the Commissioners of the District of Columbia. (May 10, 1910, 36 Stat. 381, ch. 248, in part, July 21, 1959, 73 Stat. 223, Pub. L. 86-101, § 1.)

AMENDMENTS

1959—The act of July 21, 1959, cited to text, amended the section to read as above set out.

§ 1-241. Repealed. Oct. 31, 1951, 65 Stat. 706, ch. 654, § 1 (130).

Section related to purchase of materials, supplies, and equipment by officials of the District of Columbia government. Section 630g of title 5 and section 481 of title 40 of the U. S. Code relate to the matters formerly covered by section 1-241.

§ 1-243. Rent for quarters.

COMPILER'S NOTE

Section 12 of the appropriations act of Aug. 6, 1958, provided that:

Appropriations in this Act shall be available, when authorized by the Commissioners, for the rental of quarters without reference to section 6 of the District of Columbia Appropriations Act, 1945: *Provided*, That hereafter leases for rentals shall not be on terms and periods in excess of five years. This proviso clause is set out in section 1-243a.

§ 1-243a. Leases for rentals limited to 5 years.

From August 6, 1958, leases for rentals shall not be on terms and periods in excess of five years. (Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 12.)

§ 1-244. Additional powers of Commissioners.

* * * * *

(g) *Assess and collect fees for copies and transcripts of regulations, permits, certificates and records—Disposition of moneys.*—To fix, assess, and collect fees for copies of orders, regulations, permits, certificates, and transcripts of records furnished by the District of Columbia, including, but not limited to, transcripts of records of births and deaths. No one transcript shall be made so as to apply to more than one birth or death. No fee shall be charged for certificates, copies or transcripts furnished the various departments of the United States Government for official purposes. Such fees shall not exceed the reasonably estimated cost of providing such copies, certificates, and transcripts, and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

* * * * *

(i) (1) To purchase and sell maps, and regulations and parts of regulations issued by any agency of the government of the District of Columbia and amendments thereof, including binders therefor (hereinafter referred to as "material"), at such prices as the Commissioners or their designated agent may from time to time determine to be necessary to approximate the cost thereof, including the cost of

distribution. All receipts from the sale of such material on hand as of the effective date of this amendment, shall be deposited into a fund which is hereby established, to be known as the "District of Columbia Publications Fund", which fund shall be available without fiscal year limitation for all necessary costs connected with the procurement, publication, and distribution of such material, including postage. There is hereby authorized to be appropriated from the revenues of the District of Columbia \$50,000 to provide working capital, which sum shall be deposited to the credit of the fund established by this section, and receipts from the sale of such material shall likewise be deposited to the credit of such fund: *Provided*, That as soon as practicable after the close of each fiscal year, after provision has been made for payment of all obligations then incurred, the amount in such fund in excess of \$50,000 shall be deposited to general revenues of the District of Columbia.

(2) To issue such material without charge, in the discretion of the Commissioners, to officers and employees of the governments of the United States and the District of Columbia to States, Territories, and possessions of the United States, local governmental units, and foreign governments; to institutions of research and learning; to applicants for, or holders of, particular licenses issued by the District of Columbia; and to any other person when it is determined by said Commissioners or their designated agent or agents that it is in the best interest of the District of Columbia to furnish such material without charge; and to delegate to the heads of departments and agencies of the government of the District of Columbia the authority likewise to make the distribution authorized by this paragraph of such material as may be purchased by the departments and agencies. Material to be distributed under the authority of this paragraph shall be supplied to the District of Columbia department or agency proposing to make such distribution, only upon payment by the department or agency of the cost thereof.

(j) To place orders, if they determine it to be in the best interest of the District of Columbia, with any Federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such Federal agency may be in a position to supply or be equipped to render, by contract or otherwise, and shall pay promptly by check to such Federal agency, upon its written request, either in advance or upon furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual costs of the materials, supplies or equipment furnished or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(k) To authorize any department, office, or agency of the District of Columbia government, when it is determined to be in the best interest of the District of Columbia so to do, to place orders with any other department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that such requisitioned department, office, or agency may be in a position to supply or equipped to render. The department, office, or agency placing any such orders shall either advance, subject to proper adjustment on the basis of actual cost, or reimburse, such department, office, or agency the actual cost of materials, supplies, or equipment furnished or work or services performed as determined by such department, office, or agency as may be requisitioned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

The Commissioners are authorized to delegate any of the functions to be performed by them under the authority of subsections i to k to any officer or employee of the District of Columbia. (As amended July 2, 1958, 72 Stat. 292, Pub. L. 85-491, §§ 1, 2; Aug. 21, 1959, 73 Stat. 414, Pub. L. 86-178, § 2.)

AMENDMENTS

1959—Section 2 of the act of August 21, 1959, amended subsection (g) by striking out the phrase "such fees to be paid to the Collector of Taxes and" and inserted the new matter beginning with "including" and ending with "shall be".

1958—Act of July 2, 1958, added subsections (i) to (k).

CROSS REFERENCE

Bonding of collection agencies, see section 47-2345(c).
Commissioners authority to determine and pay honorariums to various board members and commissioners—
Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—
Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

EFFECTIVE DATE OF AMENDMENT

1959—Section 3 of the act of August 21, 1959, provides as follows: This Act shall take effect sixty days after approval.

NOTES TO DECISIONS

ACTION ON BOND

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten v. Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60)

PRACTICE OF ENGINEERING

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer

was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REGULATIONS MUST BE REASONABLE

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REPEAL BY IMPLICATION

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code section was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

§ 1-245. Appointment of contracting officers—Powers—Approval of contracts over \$3,000—Void contracts—Liquidated damage contracts.

NOTES TO DECISIONS

AUTHORITY OF CONTRACTING OFFICERS

Contractors, whose bid for school supplies amounting to \$7,530.15 was accepted by contracting officers of the District of Columbia, could not relieve themselves of performance of the bid by refusing to execute contract forms on ground that no binding contract was entered into prior to approval of commissioners, and, on failure to perform, contractor was liable for difference between contract price and cost of the supplies procured elsewhere. *Singleton v. District of Columbia* (1952, 91 U. S. App. D. C. 91, 198 F. 2d 945).

CONSTRUCTION

Statute, providing that commissioners of the District of Columbia may appoint contracting officers authorized to enter into contracts for the District, authorizes the contracting officers to enter into contracts and not merely to negotiate them, and provision that contracts over \$1,000 shall not bind District until approved by commissioners is for benefit of District and not parties contracting therewith. *Singleton v. District of Columbia* (1952, 91 U.S. App. D.C., 198 F. 2d 945)

ENFORCEABILITY OF CONTRACT

The statute providing that no contract of \$1,000 or more shall be binding upon the District of Columbia until approved by the District commissioners renders unapproved contracts unenforceable against District but binding upon other party, and therefore successful bidder may not refuse to execute contract and thus prevent approval by commissioners and thereby relieve himself of consequences of his default. *District of Columbia v. Singleton* (D. C. Mun. App. 1951, 81 A. 2d 335).

§ 1-246. Powers and duties of Director of Inspection—Delegation of authority.

TRANSFER OF FUNCTIONS

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953, and as amended August 13,

1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the appendix to Title 1.

§ 1-247. Repealed. Oct. 31, 1951, 65 Stat. 706, ch. 654, § 1 (131).

Section related to purchase of materials, supplies, and equipment by officials of the District of Columbia government. Section 630g of title 5 and section 481 of title 40 of the U. S. Code relate to the matters formerly covered by section 1-247.

§ 1-251. Authority to grant additional compensation.

Authority is hereby granted to the Commissioners and to other wage-fixing authorities of the municipal government of the District of Columbia, the Secretary of the Interior and the President of the United States, in their discretion, to grant additional compensation at rates not to exceed those prevailing without regard to the provisions of section 3679 of the Revised Statutes, as amended (31 U. S. C. 665), additional compensation at rates not to exceed those prevailing in the District of Columbia for similar or comparable employment to each employee in or under the municipal government of the District of Columbia, National Capital Parks and the Executive Mansion Grounds, whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to the Classification Act of 1949, as amended, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1952. (Oct. 25, 1951, 65 Stat. 637, ch. 560, § 2.)

REFERENCE IN TEXT

The Classification Act of 1949 is set out in chapter 21 of Title 5, United States Code.

RETROACTIVE COMPENSATION

See § 4-812.

§ 1-252. Authority to fix certain licensing and registration fees.

The Commissioners of the District of Columbia are authorized and empowered to fix from time to time, in accordance with section 1-253, the fees authorized to be charged by sections 2-104, 2-119, 2-313, 2-314, 2-323, 2-326, 2-327, 2-404, 2-406, 2-408, 2-514, 2-518, 2-604, 2-609, 2-709, 2-710, 2-803, 2-806, 2-908, 2-1023, 2-1111, 2-1216, 2-1218, 2-1319, 2-1405, 2-1504, 2-1813, 45-1407. (June 5, 1953, 67 Stat. 43, ch. 101, § 1.)

§ 1-253. Same—Increase or decrease of fees.

The Commissioners may after public hearing increase or decrease the fees authorized to be charged by each of the sections listed in section 1-252 to such amounts as may, in the judgment of the Commissioners, be reasonably necessary to defray the approximate cost of administering each of said sections. (June 5, 1953, 67 Stat. 43, ch. 101, § 2.)

§ 1-254. Commissioners authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of Civil Service Retirement Act.

(a) Notwithstanding the provisions set forth in the sections mentioned in section 1-255, the Commissioners of the District of Columbia are authorized and empowered to determine from time to time the honorariums to be paid to the members of the boards, commissions, and committees appointed and established by authority of such sections, such authority to include the power to determine the total amount per annum of any such honorarium.

(b) The funds (including bonds or other securities referred to in section 2-1219) derived from fees and charges for examinations, licenses, certificates, registrations, or for any other service rendered by any such board, commission, or committee, remaining after the payment, or provision made for payment of all obligations of the respective boards, commissions, and committees outstanding as of June 30, 1954, shall be deposited in the Treasury to the credit of the District of Columbia and on and after July 14, 1956, all moneys collected for such fees and charges shall be paid into the Treasury to the credit of the District of Columbia.

(c) Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of any such board, commission or committee may receive his honorarium as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia Governments.

(d) As used in section 1-254 to 1-259, "honorarium" means the fee, per diem, compensation, or any amount paid to any member of any such board, commission, or committee for service as such member. The United States Civil Service Commission, upon recommendation of the Commissioners of the District of Columbia, is authorized to exclude from the operation of the Civil Service Retirement Act of May 29, 1930, as amended, any officer or employee or group of officers or employees within the purview of this Act whose services are intermittent and tenure of office is of limited duration. (July 14, 1956, 70 Stat. 532, ch. 590, § 1.)

REFERENCES IN TEXT

The Civil Service Retirement Act of May 29, 1930, referred to in this section, is classified to sections 691, 693, 693-1, 698, 707, 708, 709 to 715, 716, 719-1, 720 to 722, 724, 727 to 729, 730, 731, 733, 736b and 736c of title 5 of the United States Code.

§ 1-255. Applicability to various boards, commissions and committees.

Sections 1-254 to 1-259 shall apply to the boards, commissions, and committees and the members thereof, respectively, established pursuant to the following sections: 1-244, 2-101 to 2-140, 2-301 to 2-331, 2-401 to 2-411, 2-501 to 2-522, 2-601 to 2-617, 2-701 to 2-719, 2-801 to 2-812, 2-901 to 2-909, 2-1001 to 2-1031, 2-1101 to 2-1118, 2-1210 to 2-1226, 2-1301 to 2-1328, 2-1401 to 2-1408, 2-1501 to 2-1507, 2-1801 to 2-1818, 45-1401 to 45-1418, and 47-2301 to 47-2350. (July 14, 1956, 70 Stat. 533, ch. 590, § 2.)

§ 1-256. Refund of unearned fees.

Any fee or charge paid for an examination, license, certificate or registration pursuant to any sections mentioned in section 1-255 shall, if not earned, be refunded upon application therefor: *Provided*, That application for refund is made not later than the end of the third fiscal year following the fiscal year in which such fee or charge was made. (July 14, 1956, 70 Stat. 534, ch. 590, § 3.)

§ 1-257. Commissioners authorized to change and fix licensing periods.

The Commissioners are authorized, after a public hearing, to fix and change from time to time the period for which any license, certificate or registration authorized by any section set forth in section 1-255 may be issued. Upon change of a license, certificate or registration period, the fee for any such license, certificate, or registration shall be prorated on the basis of the time covered. (July 14, 1956, 70 Stat. 534, ch. 590, § 4.)

§ 1-258. Applicability of sections 1-254 to 1-258 to boards covered by Reorganization Plan No. 5 of 1952.

Whenever any board, commission, or committee, other than the Commissioners, is mentioned in sections 1-254 to 1-259, such board, commission, or committee shall be deemed to be the board, commission, or committee or other agency succeeding to the functions of the board, commission, or committee, so mentioned, pursuant to Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 5.)

§ 1-259. Appropriation for administration of laws mentioned in section 1-255.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering the sections listed in section 1-255, including the expenses of the Department of Occupations and Professions, established pursuant to authority contained in Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 6.)

§ 1-260. Holidays for District employees—Regulations.

The Board of Commissioners of the District of Columbia, for purposes of the administration of holidays for employees of the municipal government of the District of Columbia, shall have the same authority to prescribe regulations as that possessed by the President for purposes of the administration

of holidays for employees of the Federal Government. (July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 3.)

§ 1-261. Authority for transporting children of certain employees in District-owned vehicles.

The Commissioners of the District of Columbia are authorized to utilize District-owned vehicles for transportation of children of employees of the District of Columbia Government residing at Children's Center between Children's Center and Laurel, Maryland. (Aug. 18, 1958, 72 Stat. 618, Pub. L. 85-670, § 1.)

§ 1-262. Reception by Commissioners of eminent persons—Appropriation authorized.

There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, not to exceed \$10,000 in any fiscal year for such expenses as the Commissioners of the District of Columbia shall deem to be necessary, including personal services, and without reference to 41 U. S. C. section 5; the Classification Act of 1923 [5 U. S. C. Chapters 13 and 21], as amended, or the civil service laws, for the reception and entertainment of officials of foreign, State, local, or Federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia; and the certificate of the Commissioners shall be sufficient voucher for the expenditure of appropriations made pursuant to this Act. (July 11, 1947, 61 Stat. 314, ch. 231, § 1.)

COMPILERS' NOTE

This section has not appeared in any prior edition of the code.

**Chapter 3.—OFFICERS AND EMPLOYEES
GENERALLY**

Sec.

1-312. Annual and sick leave for District employees.

1-313a. Holiday pay of employees by day, hour, or piece work.

1-314a. Compensation for holiday work, minimum pay period.

1-319. Refusal to give testimony relating to office or employment.

§ 1-301 [20:82]. Corporation counsel—Duties.

TRANSFER OF FUNCTIONS

Reorganization Order No. 50 of the Board of Commissioners dated June 26, 1953, provided that the Office of the Corporation Counsel would be organized as previously constituted. The previously existing Office of the Corporation Counsel was abolished, and all functions and positions including the duties, powers, and authorities of all officers and employees of the former office were transferred to the new office. Authority to settle claims and suits against the District up to and including \$250 was delegated to the Corporation Counsel by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

The functions of the Employees Compensation Subsection, Investigation Section, Office of the Corporation Counsel, were transferred to the Personnel Office, Department of General Administration by Reorganization Order No. 21 of the Board of Commissioners dated November 20, 1952. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and the plan are set out in the appendix to Title 1. See the

note under section 1-216 concerning the establishment of the Personnel Office.

NOTES TO DECISIONS

NOTICE OF CLAIM

Where, in action against District of Columbia, for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia so that the manhole edge and cover protruded from the ground, inaccuracies were contained in written notice seasonably sent commissioner, and an attempt to cure such inaccuracies was made by seasonable correction conveyed to assistant in office of corporation counsel, to whom commissioners has referred original notice, and to District's inspector of claims, judgment, by which the Municipal Court of Appeals, because of such inaccuracies, reversed judgment rendered for plaintiff in the municipal court, would be reversed. *Stone v. District of Columbia* (1956, 99 U. S. App. D. C. 32, 237 F. 2d 28).

§ 1-304 [20:79]. Purchasing officer—Duties—Bond.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952, established under the direction and control of the Board, the Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions and positions of the Purchasing Division. Reorganization Order No. 29 dated April 14, 1953, as amended June 4, 1953, and September 17, 1953, established a Procurement Office headed by a Procurement Officer in the Department of General Administration to perform the purchasing functions of the District. The former Purchasing Division and the office of the head thereof were abolished and the functions of that Division transferred to the Procurement Office. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to this Title.

§ 1-305 [20:80]. Deputy purchasing officers.

TRANSFER OF FUNCTIONS

See the note under section 1-304 concerning the Purchasing Division and the officers and employees of the Purchasing Division.

§ 1-306 [20:81]. Municipal architect—Duties.

TRANSFER OF FUNCTIONS

Reorganization Order No. 42 of the Board of Commissioners dated June 23, 1953 established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department was to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The order sets out the functions of the new Department and its organization. The order abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Superintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division, and provided that all of their functions and positions be transferred to the Department of Buildings and Grounds. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 1-310 [20:76]. Employees—Compensation to be paid from specific appropriations—Unexpended appropriations.

NOTES TO DECISIONS

LAWFUL REMOVAL

Where heavy truck driver in District government was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him at which he was represented by counsel of his own

choice, who was permitted to call and examine witnesses under oath and to introduce testimony, and it was clear that only rules and regulations relied upon by employee were never adopted or promulgated, removal was accomplished lawfully and he was not entitled to recover wages for time he was in nonpay status. *C. E. Washington v. Government of District of Columbia* (D.C. Mun. App. 1959, 152 A. 2d 191).

§ 1-312 [20:85]. Annual and sick leave for District employees.

CODIFICATION

This section was formerly entitled "Leave of absence for District employees except of police and fire departments and public schools."

COMPILER'S NOTES

Acts Oct. 30, 1951, ch. 631, Title II, 65 Stat. 679, and July 2, 1953, ch. 178, 67 Stat. 136, which relate to annual and sick leave for federal government employees are applicable to government employees of the District of Columbia except teachers and librarians of the public schools of the District of Columbia. Officers and members of the police and fire departments of the District of Columbia are included as to provisions for annual leave, but excluded as to provisions for sick leave.

The provisions of Title 5, section 30 of the U. S. Code which related to annual and sick leave for government employees have been superseded by the provisions of the Annual and Sick Leave Act of 1951, as amended, Title 5, Chapter 23 of the U. S. Code.

CROSS REFERENCE

Leave for school teachers § 31-691.

§ 1-313a. Holiday pay of employees by day, hour, or piece work.

From July 18, 1958, whenever regular employees of the Federal Government or the municipal government of the District of Columbia whose compensation is fixed at a rate per day, per hour, or on a piece work basis are relieved or prevented from working solely because of the occurrence of a holiday such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, Veterans Day, or any other day declared to be a holiday by Federal statute, Executive order, or, with respect to employees of the municipal government of the District of Columbia, by order of the Board of Commissioners of the District of Columbia, or on any day on which the departments and establishments of the Government are closed by Executive order, or, with respect to the employees of the municipal government of the District of Columbia, on any day on which the departments or establishments of such government are closed by order of the Board of Commissioners of the District of Columbia, or, on any day on which such employees are relieved or prevented from working by administrative order issued under such regulations as may be promulgated by the President, or, with respect to the employees of the municipal government of the District of Columbia, on any day on which such employees are relieved or prevented from working by administrative order issued under such regulations as may be promulgated by the Board of Commissioners of the District of Columbia, they shall receive the same pay for such days as for days on which an ordinary day's work is performed. (June 11, 1954, 68 Stat. 249, ch. 283, § 1, July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 2.)

AMENDMENTS

Section 2 of the act of July 18, 1958, cited to text amends the section by adding "Veterans Day" as an additional holiday covered by the section and also made the section applicable to regular employees of the District of Columbia government. Prior to its amendment by the act of July 18, 1958, the section was classified only to 5 U. S. C. 86a.

CROSS REFERENCE

For provisions relating to holiday compensation of policemen, firemen, see sections 4-807 to 4-809.

Other holiday compensation provisions, see sections 1-314, 1-314a, 1-313.

§ 1-314a. Compensation for holiday work, minimum pay period.

(a) All work not exceeding eight hours, which is not overtime work as defined in section 911 of title 5 U. S. Code and which is performed on a holiday designated by Federal statute, Executive order, or with respect to employees of the municipal government of the District of Columbia, by order of the Board of Commissioners of the District of Columbia, shall be compensated at the rate of basic compensation of the officer or employee performing such work on a holiday plus premium compensation at a rate equal to the rate of basic compensation of such officer or employee.

(b) Any officer or employee who is required to perform any work on such a holiday shall be compensated for at least two hours of such work, and any such premium compensation due under the provisions of this section shall be in addition to any premium compensation which may be due for the same work under the provisions of section 921 of title 5 of the U. S. Code providing premium compensation for nightwork.

(c) Overtime work, as defined in section 911 of title 5 U. S. Code, on Sundays and such holidays shall be compensated in accordance with the provisions of section 911 of this title. (As amended Sept. 1, 1954, ch. 1208, title II, § 207, 68 Stat. 1110; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 1.)

AMENDMENTS

Section 1 of the act of July 18, 1958, amends this section by striking out "or Executive order," from subsection (a) thereof and inserting at that point the following clause " , Executive order, or with respect to employees of the municipal government of the District of Columbia, by order of the Board of Commissioners of the District of Columbia, ". This section was formerly classified only to 5 U. S. C. 922, since it was not applicable to the employees of the District of Columbia.

CROSS REFERENCE

For provisions relating to holiday compensation of policemen, firemen, see sections 4-807 to 4-809. Other holiday compensation provisions, see sections 1-314, 1-313a.

§ 1-316 [20:74]. Persons convicted of certain crimes ineligible to hold office.

No person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, upon final judgment, duly recovered according to law, all such moneys due from him, shall be eligible to any office of profit or trust in the District. Except upon the written approval of the Commissioners, or of an official or

officials of the District acting pursuant to rules and regulations issued by the Commissioners, no person who has been convicted of a felony in the District of Columbia or of an offense in any other jurisdiction which, if committed in the District, would be a felony, shall be employed in or by the government of the District of Columbia or any agency thereof. (R. S., D. C., § 86; June 20, 1874, 18 Stat. 116, ch. 337, § 1; June 24, 1954, 68 Stat. 272, ch. 358, § 1.)

AMENDMENTS

1954—The act of June 24, 1954, deleted the words "person convicted of bribery, perjury, or other infamous crime, nor any" from the first sentence, and added the last sentence concerning persons convicted of a felony.

§ 1-319. Refusal to give testimony relating to office or employment.

(a) Any officer or employee of the District who refuses to testify upon matters relating to his office or employment in any proceeding wherein he is a defendant or is called as a witness, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit his office or employment and any emolument, perquisite, or benefit (by way of pension or otherwise) arising therefrom, and be disqualified from holding any public office or employment under the District.

(b) Any former officer or employee of the District who refuses to testify upon matters relating to his former office or employment in any proceeding wherein he is a defendant or is called as a witness, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit any emolument, perquisite, or benefit (by way of pension or otherwise) arising from such former office or employment, and be disqualified from holding any public office or employment under the District.

(c) If the retirement pay, pension, or annuity of any officer or employee or former officer or employee of the District is forfeited under this section, there shall be paid to such individual a sum equal to (1) the total amount paid by him as contributions toward such retirement pay, pension, or annuity, plus any accrued interest attributable to such contributions, less (2) the total amount of such retirement pay, pension, or annuity received by him prior to such forfeiture. (June 29, 1953, 67 Stat. 108, ch. 159, § 409.)

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

NOTES TO DECISIONS

PROSPECTIVE EFFECT

The 1953 statute, which provides that officer or employee of District of Columbia who refuses, on ground of self-incrimination, to testify on certain matters shall forfeit, among other things, pension rights, applies to refusal made subsequent to effective date of act. *Spencer v. Bullock* (1954, 94 U. S. App. D. C. 388, 216 F. 2d 54).

Chapter 5.—NOTARIES PUBLIC

§ 1-504. Oath and bond.

Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the District of Columbia in the sum of \$2,000, with security, to be approved by the District Court of the United States for the District of Columbia or a justice thereof, for the faithful discharge of the duties of his office. Where any such notary public is an officer or employee of the Government of the District of Columbia whose notarial duties are confined solely to government official business, any bond covering such officer or employee for the faithful performance of such notarial duties obtained by the Commissioners of the District of Columbia pursuant to the authority conferred on them by law shall be in lieu of the bond required by the first sentence of this section. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 561; Dec. 16, 1944, 58 Stat. 811, ch. 597, § 2; July 7, 1955, 69 Stat. 281, ch. 280, § 5.)

AMENDMENTS

1955—Act of July 7, 1955, added the last sentence.

CROSS REFERENCE

For provisions authorizing allowances to civilian employees of the District of Columbia, who are notaries public, for notarial services in connection with official business, see 5 U. S. C. 70 (a) and (b) (70 Stat. 519, ch. 554, §§ 1, 2 and 3).

Chapter 6.—SURVEYOR

§ 1-601 [25:431]. Appointment and term of office—Salary.

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 of the Board of Commissioners dated April 3, 1953, abolished the previous existing Office of the Surveyor including the office of the head thereof, and established the Office of the Surveyor headed by a Surveyor, under the direction and control of the Engineer Commissioner. All positions under the previous office of Surveyor were transferred to the new office with certain named exceptions. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

§ 1-703 [20:368b]. Boiler inspection service created—Personnel.

TRANSFER OF FUNCTIONS

See note under section 1-246 concerning the Department of Licenses and Inspections.

§ 1-719 [20:69]. Electric wiring—Inspection—Rules and regulations—Fees.

TRANSFER OF FUNCTIONS

See note under section 1-246 concerning the Department of Licenses and Inspections.

§ 1-724 [20:60]. Plumbing—Appointment of inspector—Duties.**TRANSFER OF FUNCTIONS**

See note under section 1-246 concerning the Department of Licenses and Inspections.

§ 1-725 [20:61]. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.**NOTES TO DECISIONS****SENTENCE**

Though it was not called to the attention of the Municipal Court of Appeals for the District of Columbia on appeal by defendants from conviction for failure to comply with plumbing regulations of the District of Columbia after statutory notice, that sentence of \$100 or sixty days imprisonment in default of payment of fine was improper because statute provides for a fine of not more than \$200 or, in default of payment of fine, imprisonment not to exceed thirty days, the Municipal Court of Appeals would remand the case with instructions to vacate existing sentence and resentence defendants in accordance with statute. *Iskovitz v. District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 519).

STATUTORY NOTICE

Where defendants did not call to attention of trial court the fact that information, which charged them with failure to comply with plumbing regulations of the District of Columbia after statutory notice, did not allege that notice required work to be completed within a specified time, and there was no showing of prejudice, and defendants did not contend that notice did not adequately advise them of the time in which the work should be done, defendants could not complain of such omission on appeal. *Iskovitz v. District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 519).

§ 1-727 [20:63]. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.**TRANSFER OF FUNCTIONS**

See note under section 1-246 concerning the Department of Licenses and Inspections.

Chapter 8.—CONTRACTS

Sec.

1-817c. Sewerage agreement with Virginia authorized.

§ 1-801 [20:44]. Limitation on right of Commissioners to contract.**TRANSFER OF FUNCTIONS**

See note under section 1-102 concerning contracts.

§ 1-804 [20:47]. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.**NOTES TO DECISIONS****LIABILITY UNDER PRIME CONTRACTOR'S BOND**

Under Code provisions for prime contractor's bond to assure payments to all persons supplying labor and materials for work under contract, it is not necessary that supplier have any contractual relationship with prime contractor, and it is sufficient to require payment under bond to supplier if labor or material complying with prime contract was furnished by supplier to prime or subcontractor and used by such contractor in prosecution of work; and it is immaterial whether supplier produces or acquires material or labor. *Boka Electrical Construction Co., Inc. v. W. M. Chappell, Inc.* (1958, 104 U.S. App. D.C. 407, 262 F. 2d 718).

It is labor and materials sold to contractor and used for job, and not loans, that are covered; and where financial institution or person lends money to contractor or sub-

contractor to purchase material or hire labor in order to carry out his contract, no valid claim arises in lender's favor under contract bond. *Id.*

RIGHT OF SUPPLIER AS JOINT VENTURER

Supplier of material and labor would be entitled to recover under prime contractor's construction bond if material or labor had been provided under such an arrangement with subcontractor as to make subcontractor responsible therefor and had been used by subcontractor on project, but would not be entitled to recover if arrangement between supplier and subcontractor was a joint venture or similar undertaking of such nature that payment to one should equitably be considered as payment to either. *Boka Electrical Construction Co., Inc. v. W. M. Chappell Inc.* (1958, 104 U.S. App. D.C. 407, 262 F. 2d 718).

§ 1-807 [20:50]. Retents**NOTES TO DECISIONS****FINALITY OF ADMINISTRATIVE DECISIONS**

Where only questions of law were involved which were (1) whether retained 10% by District of Columbia was limited to insuring only that actual work of street and sewer construction be completed, or whether it also covered restoration of damaged property, and (2) whether interest should be allowed on sum retained in excess of 10% decision of District Contract Appeals Board was not final and binding on the parties on such questions notwithstanding provision of contract that decision of such board should be final in view of statute providing that no government contract should contain a provision making final on question of law decision of any administrative official or board, and hence contractor could maintain action to recover the money withheld. *Kenny Construction Company v. District of Columbia et al.* (1959, 105 U.S. App. D.C. 8, 262 F. 2d 926).

INTEREST ON EXCESSIVELY WITHHELD FUNDS

Where District of Columbia Contract Appeals Board ordered the District to pay as of certain date the amount in excess of 10% retained under contract for street and sewer construction, contractor was entitled to interest from such date to date of actual payment even though contract did not authorize payment of interest on withheld payments, since the sum required to be paid back was in excess of the 10% authorized to be retained and should not have been withheld at all. *Kenny Construction Company v. District of Columbia et al.* (1959, 105 U.S. App. D.C. 8, 262 F. 2d 926).

PURPOSE OF RETENT

Under contract for street and sewer construction which authorized District of Columbia to retain 10% until "completion and acceptance of the work", the 10% withheld was to insure not only the completion of the actual work but also the restoration of property damaged by act or omission of contractor, as against contention that liability insurance and performance bond constituted the expressly designated protection to District under the contract and District could not enlarge such coverage by superimposing upon them, without contractor's consent, the coverage of withheld money, since contract gave District the triple protection of which contractor complained. *Kenny Construction Company v. District of Columbia et al.* (1959, 105 U.S. App. D.C. 8, 262 F. 2d 926).

"WORK" DEFINED

The word "work" in provision of contract for street and sewer construction authorizing retention of 10% until "completion and acceptance of the work" included all tasks contractually required of the contractor and was not limited to construction of project itself, and hence included contractual requirement of restoration of damaged property. *Kenny Construction Company v. District of Columbia et al.* (1959, 105 U.S. App. D.C. 8, 262 F. 2d 926).

§ 1-815 [20:56b]. Wages of laborers and mechanics employed in construction, alteration, and repair of public buildings—Prevailing rate—Disputes—Suspension in national emergency.

The advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State, or the Territory of Alaska, or the Territory of Hawaii in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents. (Mar. 3, 1931, ch. 411, § 1, 46 Stat. 1494; Aug. 30, 1935, ch. 825, 49 Stat. 1011; June 15, 1940, ch. 373, § 1, 54 Stat. 399.)

AMENDMENTS

1940—The 1940 amendment extended the application of this section to the Territories of Alaska and Hawaii.

1935—The 1935 amendment made the minimum wage provision applicable to contracts of more than \$2,000. Further it required that full payment of wages based on the prevailing scale as determined by the Secretary of Labor be made at least once a week on the job. Enforcement provisions were included.

EFFECTIVE DATE

Section 2 of act June 15, 1940, cited to text, provided: "The amendments made by this Act shall take effect on the thirtieth day after the date of enactment of this act, but shall not affect any contract in existence on such

effective date or made thereafter pursuant to invitations for bids outstanding on the date of enactment of this act."

§ 1-817c. Sewerage agreement with Virginia authorized.

For the protection of the Potomac River and its tributary streams within the metropolitan area of the District of Columbia from pollution by sewage or other liquid wastes originating in Virginia, and for the protection of the health of the residents of the District of Columbia and of the employees of the United States Government residing in such metropolitan area, the Commissioners of the District of Columbia are authorized in their discretion, from time to time, to enter into and renew agreements, for such periods as they deem advisable, with the proper authorities of the Commonwealth of Virginia, including county, municipal, and other governmental units thereof, for the drainage of such sewage or other liquid wastes into the sewerage system of the District of Columbia for treatment and disposal: *Provided*, That to the extent and in the manner determined by such agreements, the proper authorities of such Commonwealth, county, municipal, or other governmental units shall pay part or all of the costs of construction, expansion, relocation, replacement, repair, maintenance, and operation (including administrative expenses, interest, and amortization) of such sewers and other facilities as may be necessary or appropriate to convey and treat such sewage or other liquid wastes either separately or with sewage or other liquid wastes originating in said District or elsewhere. All payments or reimbursements made to the District of Columbia pursuant to this Act and the agreements entered into hereunder shall be made to the Commissioners and shall be deposited in the Treasury of the United States to the credit of the District of Columbia Sewage Works Fund. (Aug. 21, 1958, 72 Stat. 702, Pub. L. 85-703, § 1.)

DEFINITIONS

Section 2 of the act of August 21, 1958, cited to text, defines the terms "Commissioners of the District of Columbia" and "Commissioners" to mean the Board of Commissioners of the District of Columbia or their designated agents.

Chapter 9.—CLAIMS AGAINST DISTRICT

Sec.

1-906. Authority to compromise claim or suit—Limitations.

§ 1-901 [20:25]. Service of process.

NOTES TO DECISIONS

JURISDICTION

In federal court action for injuries to two occupants of automobile and death of owner thereof as results of collision with defendants' tractor driven by member of District of Columbia National Guard, service of copy of complaint and summons on Secretary of State of Delaware under such state's nonresident motor vehicle user statute did not give federal district court of Delaware jurisdiction over District of Columbia. *Rev. Code Del.* 1935, § 4590; *O'Toole et al. v. United States et al.* (1952, 106 F. Supp. 804).

METHOD OF SERVICE EXCLUSIVE

Congress having exclusive legislative authority over District of Columbia, method of service of process, pro-

vided for by federal statute in suit against such district, is exclusive, so as to preclude service on Delaware Secretary of State, who is not one of persons on whom federal statute provides that service may be made in such suits. *O'Toole et al. v. United States et al.* (1952, 106 F. Supp. 804).

§ 1-902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Torts committed by officers and employees of the District of Columbia while in the exercise of governmental functions, cannot be made the basis of liability in a suit against District. Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 199, 225 F. 2d 38).

WAIVER OF IMMUNITY

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Edwin M. Adams v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 765).

§ 1-904 [20: 105]. Settlements limited to \$10,000—Report to Congress—Appropriations authorized.

No settlement of any claim or cause of action herein authorized by sections 1-902 to 1-905 to be made by the Commissioners of the District of Columbia shall in any event exceed the sum of \$10,000 and all settlements entered into by the Commissioners of the District of Columbia acting under the terms and provisions of sections 1-902 to 1-905 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and circumstances under which the settlement was made. Appropriations for the payment of such settlements are hereby authorized, payment thereof to be made in the same manner as are other expenditures for the District of Columbia. (As amended July 31, 1951, 65 Stat. 131, ch. 274, § 1.)

AMENDMENTS

1951—Sec. 1 of the act of July 31, 1951, substituted "\$10,000" for "\$5,000."

§ 1-906. Authority to compromise claim or suit—Limitations.

Upon a report by the corporation counsel of the District of Columbia showing in detail the just and true amount and condition of any claim or suit which the District of Columbia may on July 31, 1951, or thereafter have against any person, firm, association, or corporation, and the terms upon which the same may be compromised, and stating that in his opinion a compromise of such claim or suit would be for the best interest of the District of Columbia, the Commissioners of the District of Columbia be, and they hereby are, authorized to compromise such claim or suit accordingly: *Provided, however,* That no claim or suit so compromised shall be reduced by an amount greater than \$10,000: *And provided further,* That this section shall not apply to claims or suits

for taxes or special assessments. (July 31, 1951, 65 Stat. 131, ch. 274, § 2.)

Chapter 10.—NATIONAL CAPITAL PLANNING COMMISSION

Sec.

- 1-1001. General purposes, findings and definitions.
- 1-1002. The Commission—Composition—Functions.
- 1-1003. National Capital Regional Planning Council—Establishment and composition—Services and facilities—Procedure.
- 1-1004. Comprehensive plan for the National Capital—Elements—Procedure.
- 1-1005. Proposed Federal and District developments and projects.
- 1-1006. Thoroughfare plan.
- 1-1007. Public works program.
- 1-1008. Zoning and subdivision functions.
- 1-1009. Transfers from predecessor agency.
- 1-1010. Appropriations.
- 1-1011. Acquisition of land by commission—Advice of Commission on Fine Arts—Approval of President.
- 1-1012. Appropriation for acquisition of such land—Control—Use.
- 1-1013. Report of Commission to Congress—Estimate for Bureau of the Budget.

§ 1-1001. General purposes, findings, and definitions.

(a) It is the purpose of this chapter to secure comprehensive planning for the physical development of the National Capital and its environs; to provide for the participation of the appropriate planning agencies of the environs in such planning; and to establish the agency and procedures requisite to the administration of the functions of the Federal and District of Columbia governments related to such planning. The Congress hereby finds that the location of the seat of government in the District of Columbia has brought about the development of a metropolitan region extending well into adjoining territory in Maryland and Virginia; that effective comprehensive planning is necessary on a regional basis and of continuing importance to the Federal establishment; that the distribution of Federal installations throughout the region has been and will continue to be a major influence in determining the extent and character of development; that there is needed a central planning agency for the National Capital region to coordinate certain developmental activities of the many different agencies of the Federal and District Governments so that such activities may conform with general objectives; that there is an increasing mutuality of interest and responsibility between the various levels of government that calls for coordinate and unified policies in planning both Federal and local development in the interest of order and economy; that there are developmental problems of an interstate character, the planning of which requires collaboration between Federal, State, and local governments in the interest of equity and constructive action; and that the instrumentalities and procedures herein provided will aid in providing the Congress from time to time with information and advice requisite to legislation. The general objective of this chapter is to enable appropriate agencies to plan for the development of the Federal establishment at the seat of government in a manner consistent with the nature and function

of the National Capital and with due regard for the rights and prerogatives of the adjoining States and local governments to exercise control appropriate to their functions, and in a manner which will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development.

(b) As used in this chapter, (1) "region" or "National Capital region" means the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties; (2) "environs" means the territory surrounding the District of Columbia included within the National Capital region; (3) "National Capital" means the District of Columbia and territory owned by the United States within the environs; and (4) "planning agency" means any city, county, bi-county, part-county, or regional planning agency authorized under State and local laws to make and adopt comprehensive plans whether or not its jurisdiction is exclusive or concurrent. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 781, ch. 949, § 1.)

COMPILER'S NOTE

Section 1 of the act of July 19, 1952, cited to text, was substituted for section 1 of the act approved June 6, 1924, formerly set out as § 8-101.

POPULAR NAME

Section 2 of the act of July 19, 1952, provided: "Sections 1 [sections 1-1001 to 1-1010] and 2 [sections 1-1011 to 1-1013] of this Act may be cited as the National Capital Planning Act of 1952."

§ 1-1002. The Commission—Composition—Functions.

(a) The National Capital Planning Commission, hereinafter called the "Commission", is hereby created and designated as the central planning agency for the Federal and District Governments to plan the appropriate and orderly development and redevelopment of the National Capital and the conservation of the important natural and historical features thereof.

(b) The Commission shall be composed of—

(1) ex officio, the Chief of Engineers of the Army, the Engineer Commissioner of the District of Columbia, the Director of the National Park Service, the Commissioner of Public Buildings, the Commissioner of Public Roads, the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives (either of which chairmen if unable to serve in person may designate another member of his committee to serve as a member of the Commission in his stead) and, in addition,

(2) five eminent citizens well qualified and experienced in city or regional planning, to be appointed by the President, at least two of whom shall be bona fide residents of the District of Columbia or the environs, including one of such residents who shall

be appointed from among not less than three nominees of the Board of Commissioners of the District of Columbia: *Provided*, That the foregoing professional requirements may be waived in the case of the nominees of the Board of Commissioners if in the opinion of the Board of Commissioners said nominee has demonstrated capacity for leadership in the planning and development of the District of Columbia: *And provided further*, That appointive members of the National Capital Park and Planning Commission in office on July 19, 1952 shall serve out their unexpired terms, as members of the Commission, in lieu of an equal number of members provided for in this paragraph (2). The terms of office of other members first appointed under this paragraph (2) shall be so fixed by the President that the term of one of such five members will expire on April 30 of each of the following years, namely, 1953, 1954, 1955, 1956, 1957, and thereafter the terms of office shall expire every six years following such dates, respectively. Any member of the Commission appointed under this paragraph (2) shall, the expiration of his term notwithstanding, continue as a member, pending the appointment and qualification of the successor. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The appointive members of the Commission shall receive no compensation as such, but shall be paid a per diem in lieu of subsistence and be reimbursed for the cost of travel when attending meetings of the Commission or engaged in investigations or other specific duties pertaining to its activities, in accordance with applicable law.

(c) The President shall designate the Chairman of the Commission and the Commission may elect from among its members such other officers as it deems desirable. The Commission is authorized to employ a Director, an executive officer, and such other technical and administrative personnel as it may deem necessary. Further, without regard to section 3709 of the Revised Statutes, as amended (41 U. S. C. 5), the civil service and classification laws, or section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), the Commission may employ, by contract or otherwise, the temporary or intermittent (not in excess of one year) services of city planners, architects, engineers, appraisers, and other experts or organizations thereof, as may be necessary to carry out its functions, and in any such case the rate of compensation shall be fixed by the Commission so as not to exceed the rate usual for similar services.

(d) The Commission may establish, with the consent of each agency concerned as to its representation, such advisory and coordinating committees composed of representatives of such agencies of the Federal and District of Columbia Governments as may be necessary or helpful to obtain the maximum amount of cooperation and correlation of effort among the various agencies of such Governments, in order that the National Capital may be developed in accordance with the comprehensive plan. As it may deem appropriate, the Commission may invite rep-

representatives of the planning and developmental agencies of the environs to participate in the work of such committees.

(e) As hereinafter more specifically described in sections 1-1004 to 1-1008, it shall be among the principal duties of the Commission to (1) prepare, adopt, and amend a comprehensive plan for the National Capital and make related recommendations to the appropriate developmental agencies; (2) serve as the central planning agency for the Federal and District Governments, within the National Capital region, and in such capacity to review their development programs in order to advise as to consistency with the comprehensive plan; and (3) be the representative of the Federal and District Governments for collaboration with the Regional Planning Council, as hereinafter provided. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 782, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1003. National Capital Regional Planning Council—Establishment and composition—Services and facilities—Procedure.

(a) There is hereby established a National Capital Regional Planning Council, hereinafter referred to as the "Council", to be composed, whenever possible, of representatives of the planning agencies of the region, of demonstrated capacity for leadership in the planning of the region. The Council shall consist of the Chairman of the Commission, ex officio, Engineer Commissioner of the District of Columbia, and not to exceed eight other members who, with their alternates, shall be appointed by the Commission, pursuant to nominations as hereinafter provided. For the Maryland environs, the Maryland-National Capital Park and Planning Commission may nominate two of its members, one each for the portions of the Maryland-Washington regional district within Montgomery and Prince Georges Counties, respectively, and for the portion of either county without the said Maryland-Washington regional district, the governing bodies of each county may nominate a member of the planning agency for each such portion: *Provided*, That if any portion of either county is without a planning agency the governing body of such county may nominate a qualified person to represent such portion. For the Virginia environs, the Northern Virginia Regional Planning and Economic Development Commission, after soliciting recommendations from the governing bodies of the cities and counties of the Virginia environs, may nominate 4 persons, each of whom shall be a member of a planning agency in the Virginia environs but no more than one of whom shall be from the same city or county. An equal number of alternate members of the Council from the Maryland and Virginia portions of the regions may be nominated by the nominating authorities designated herein. The members of the Council shall receive no compensation for their services on the Council, but may, notwithstanding the provisions of title 18 U. S. C. 1914, continue to accept such compensations

as may be paid to them as members of local governmental agencies. The Council shall select its chairman from among its members.

(b) Any county or portion of any county in Maryland or Virginia may hereafter be added to the National Capital region if the local governing body of such county shall so request and if the Commission and the Council shall find that such addition to the region is appropriate and shall accordingly approve such request. Any county or portion of any county so added to the region may participate in the work of the Council according to such terms and conditions as may be mutually agreed upon by the Commission, the Council and the governing body of such county except that no provision for participation shall permit an increase in the number of members of the Council as herein constituted.

(c) The Commission shall make available to the Council such technical and clerical assistance and such other services and facilities as may be necessary for the performance of the functions of the Council. The Council may accept such assistance, services, and facilities as may be made available by any State or local governmental authority having jurisdiction in the areas in which the agencies herein authorized to nominate members of the Council have jurisdiction.

(d) The Council is authorized to adopt and, from time to time, amend, or extend, a general plan for the development of the region, to serve as a general framework or guide of development within which each part of the region may be more precisely planned by the appropriate planning agency or agencies. The regional plan shall include a land-use plan which designates the proposed general distribution and general locations and extents of the uses of land for such categories as may have important influence on the development of the region; and in addition, such other elements of a general plan having over-all influence as are required to provide for the proposed major movements of people and goods throughout the region, for the primary facilities for community development and for the conservation and development of natural resources. As the basis for its plans, the Council shall at all times give consideration to those features of any plan duly adopted by the Commission or any planning agency appropriate for incorporation in the general plan for the region. The Council shall also consider and aim to accommodate the land-use requirements of the Federal and District Governments in the environs. These provisions shall not operate to prevent the Council from proposing changes, additions, or substitutions for consideration by any of the planning agencies of the region.

(e) The Council shall collaborate with the Commission and promote collaboration and cooperation between the Commission and the planning agencies of the environs and the Maryland and Virginia State planning agencies. To that end, it may assemble and interchange information, conduct surveys essential to its work, and in general seek to reconcile the plans and proposals of the planning agencies of the region. It may also cooperate with the plan-

ning or other public agencies having jurisdiction in the area beyond the boundaries of the region. It may, at its discretion, periodically provide opportunity by public hearings, meetings, or conferences, exhibitions and publication of its plans, for review and comments by nongovernmental groups and the general public. The Council shall report annually on the progress of its work to the Commission and to the agencies which are represented thereon. At any time subsequent to July 19, 1955, the Council may make recommendations to the Commission or other agencies represented on the Council for any legislation which, as the result of its experience, it may deem desirable to make its general purpose more effective.

(f) In making any recommendation, adopting any plan, or approving any proposal action shall be taken by a majority vote of all members of the Council: *Provided, however,* That no action affecting directly a single local planning jurisdiction may be approved except by the affirmative vote of the member representing that jurisdiction: *Provided, further,* That in the case of an action involving more than one jurisdiction, the negative votes of a minority of the Council shall be made a matter of record and shown on all plans adopted. No vote by any member of the Council shall be construed as an official commitment of the agency represented by the member unless so authorized by said agency. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 783, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1004. Comprehensive plan for the National Capital—Elements—Procedure.

(a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal and District developments or projects in the environs. The Commission shall collaborate with the Council in the development of those elements of the plan for the National Capital which should be incorporated in the regional plan provided for in section 1-1003. While consistency between the respective proposals of the Commission and the Council shall be sought, lack of action or agreement by the Council shall not prevent the Commission from adopting any part of its plan within the District of Columbia or any recommendation or proposal for Federal or District developments or projects in the environs. The Commission may include in its plan any portion of any plan adopted by the Council or any planning agency in the environs and from time to time make recommendations of collateral interest to the Council or to the aforesaid agencies.

(b) The Commission's plan for the National Capital shall show its recommendations for the development of the District of Columbia and may include, among other things, the general location, arrangement, character, and extent of highways, streets, bridges, viaducts, subways, major thoroughfares,

and other facilities for the handling of traffic; parks, parkways and recreation areas, and the facilities for their development and use; public buildings and structures, including monuments and memorials, public reservations or property, such as airports, parking areas, institutions, and open spaces; land use, zoning, and the density or distribution of population; public utilities and services for the transportation of people and goods or the supply of community facilities; waterway and water-front development; redevelopment of obsolescent, blighted, or slum areas; neighborhood areas; projects affecting the amenities of life, the preservation and conservation of natural scenery and resources, and features of historic and scientific interest and educational value; and all other proper elements of city and regional planning. The plan may include appropriate maps, plats, charts, tables, and descriptive, interpretive and analytical matter, economic and social aspects, and trends of urban development, and such functional and sectional plans as the Commission deems necessary or desirable. The Commission's recommendations or proposals for Federal and District developments or projects in the environs may include their general location, character, size, and intensity of use and such general plans for their development as may be necessary to present the Commission's recommendations to the appropriate authorities.

(c) As a general frame of reference for the Commission in making its recommendations under the foregoing subsection (b), the Commission shall at all times give primary consideration to the broad elements of the plan which shall include, but not be limited to, generalized plans for land use, major thoroughfares, park, parkway, and recreation system, mass transportation, and community facilities and services. These generalized plans shall also be the basis for integrating the Commission's proposals with those of the Council and for the general purpose of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the National Capital and its environs.

(d) The Commission may, as the work of preparing the comprehensive plan progresses, adopt any element or a part or parts thereof and from time to time shall review and may amend or extend the plan, in order that its recommendations may be kept up to date.

(e) Prior to the final adoption of the comprehensive plan or any element thereof, or any subsequent revision, the Commission shall present such plan, element, or revision to the appropriate Federal or District of Columbia authorities for comment and recommendations. Presentation of proposed revisions may at the Commission's discretion be made annually in a consolidated form. The said recommendations by Federal and District of Columbia authorities shall not be binding on the Commission, but it shall give careful consideration to such views and recommendations as are submitted prior to final adoption. The Commission may, in addition and at its discretion, periodically provide opportunity by public hearings, meetings, or conferences, exhibitions and publication of its plans, for review and

comments by nongovernmental agencies or groups, and, in consultation with the Commissioners of the District of Columbia, encourage the formation of one or more citizen advisory councils.

In carrying out its planning functions with respect to Federal developments or projects in the environs, the Commission may act in conjunction and cooperation and enter into agreements with any State or local authority or planning agency, as the Commission may deem necessary, to effectuate the adoption of any plan or proposal and secure its realization. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 785, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1005. Proposed Federal and District developments and projects.

(a) In order to insure the comprehensive planning and orderly development of the National Capital, each Federal and District of Columbia agency prior to the preparation of construction plans originated by such agency for proposed developments and projects or to commitments for the acquisition of land, to be paid for in whole or in part from Federal or District funds, shall advise and consult with the Commission in the preparation by the agency of plans and programs in preliminary and successive stages which affect the plan and development of the National Capital: *Provided, however,* That the Commission shall determine in advance the type or kinds of plans, developments, projects, improvements, or acquisitions which do not need to be submitted for review by the Commission as to conformity with its plans. After receipt of such plans, maps, and data, it shall be the duty of the Commission to make promptly a preliminary report and recommendations to the agency or agencies concerned. If, after having received and considered the report and recommendations of the Commission the agency does not concur, it shall advise the Commission with its reasons therefor, and the Commission shall submit a final report. After such consultation and suitable consideration of the views of the Commission the agency may proceed to take action in accordance with its legal responsibilities and authority.

(b) The procedure prescribed in subsection 1-1005 (a) hereof shall not apply to projects within the Capitol grounds or to structures erected by the Department of Defense during wartime or national emergency within existing military, naval, or Air Force reservations, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require coordinated planning of the surrounding area.

(c) The provisions of section 5-428 are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District as said central area may be defined and from time to time redefined by concurrent action of the Commission and the Board of Commissioners of the District of Columbia.

(d) Within the environs, general plans showing the location, character, extent and intensity of use for proposed Federal and District developments and projects involving the acquisition of land, shall be submitted to the Commission for report and recommendations before final commitment to said acquisition, unless such matters shall have been specifically approved by an Act of Congress. Before acting on any general plan, the Commission shall advise and consult with the Council and the appropriate planning agency having jurisdiction over the affected part of the environs. When, in the judgment of the Commission, proposed developments or projects submitted to the Commission under subsection (a) hereof involve a major change in the character or intensity of an existing use in the environs, the Commission shall likewise advise and consult with the Council and the aforesaid planning agency. The report and recommendations required under this subsection shall be submitted within sixty days and shall be accompanied by any reports or recommendations that may have been prepared by the Council or the aforesaid planning agency.

(e) It is the intent of the foregoing provisions of this section to obtain cooperation and correlation of effort between the various agencies of the Federal and District Governments which are responsible for public developments and projects, including the acquisition of land. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal and District Governments in the National Capital region. To aid the Commission in carrying out this function, plans, data, and records, or copies thereof, necessary to the Commission shall be furnished upon its request by such Federal and District governmental agencies; and the Commission shall likewise furnish related plans, data, and records, or copies thereof, to Federal and District of Columbia governmental agencies upon request. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 787, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1006. Thoroughfare plan.

(a) As elements of the comprehensive plan described in section 1-1004, the Commission shall prepare a major thoroughfare plan and a mass transportation plan. The major thoroughfare plan may include established and proposed routes. Following the preparation and adoption by the Commission of the major thoroughfare plan, or parts thereof, it shall be submitted to the Board of Commissioners of the District of Columbia and if approved by the said Board shall be deemed to be the approved plan. Revisions in the major thoroughfare plan or parts thereof shall similarly require the adoption by the Commission and approval by the Board of Commissioners of the District of Columbia. The mass transportation plan shall be prepared, adopted, approved, or revised in the same manner as prescribed herein, for the major thoroughfare plan except that the Joint Board provided for in section 40-603 (e),

shall be responsible for its approval and approval of subsequent revisions. Revision of the major thoroughfare plan or parts thereof and the mass transportation plan may be proposed by the Commission and may also be proposed by the Board of Commissioners of the District of Columbia with respect to the thoroughfare plan and by said Joint Board with respect to the mass transportation plan.

(b) Prior to final adoption of the thoroughfare plan and its submission to the Board of Commissioners of the District of Columbia for approval under the foregoing subsection, the Commission shall consult with the Council and the planning agencies affected regarding the Commission's recommendations for extension of the thoroughfare system of the District of Columbia to serve Federal and District developments and projects in the environs. Such recommendations shall be made after consultation with the Bureau of Public Roads, the National Park Service, the Board of Commissioners of the District of Columbia and the appropriate State highway agencies. The Council may review the Commission's recommendations as to consistency with its general plan for the region and submit a report thereon, which the Commission shall transmit with its own recommendations to the Bureau of Public Roads as a guide to portions of the regional thoroughfare plan included or to be included in the Federal-aid highway system. After consideration of such report and recommendations, the Bureau of Public Roads may proceed to take action in accordance with its legal responsibilities and authority. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 789, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1007. Public works program.

The Commission shall recommend a six-year program of public works projects which it shall review annually with the agencies concerned. To this end each Federal agency and the Board of Commissioners of the District of Columbia shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 789, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1008. Zoning and subdivision functions.

(a) The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia on proposed amendments of the zoning regulations and maps as to the relation or conformity of such amendments with the comprehensive plan of the District of Columbia. The Commission may also submit to the said Zoning Commission proposed amendments or general revisions to the zoning regulations or the zoning map for said District.

(b) When requested by a properly authorized representative of the Commission, the Zoning Commission may at its discretion recess for a reasonable period of time any public hearing held by it to consider a proposed amendment to the zoning regulations or map, in order that the Commission or its representative may have an opportunity to present to the Zoning Commission a further report on the proposed amendment.

(c) The functions vested in the Commission pursuant to this section may, to such extent as the Commission shall determine, and subject to confirmation by the Commission when requested by the Zoning Commission of the District of Columbia, be performed by a committee of the Commission which shall be known as the Zoning Committee of the National Capital Planning Commission and shall consist of not less than three members of the Commission designated by the Commission for the purpose. The number of members serving on the Zoning Committee may be varied from time to time.

(d) Any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia shall first be submitted to the Commission by the Board of Commissioners of the District of Columbia for report and recommendation prior to adoption by such Board. Should the Board not concur in the recommendations of the Commission, it shall so advise the Commission with its reasons therefor and the Commission shall submit a final report within thirty days. After consideration of this final report, the Board may proceed to take action in accordance with its legal responsibilities and authority. It shall be the duty of the Commission to submit any proposed changes in or amendments to the general orders that the Commission considers appropriate and the Board of Commissioners shall treat the amendments proposed in the same manner as other proposed amendments. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 790, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1009. Transfers from predecessor agency.

All other functions, powers, and duties of the National Capital Park and Planning Commission, including those formerly vested in the Highway Commission established by the sections: 7-108 to 7-112, and those formerly vested in the National Capital Park Commission by the sections 8-101, 8-102, 8-106, and 8-107, together with the personnel, records, property, and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, including trust funds, of the National Capital Park and Planning Commission, are hereby transferred to the Commission. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 790, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1010. Appropriations.

There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated and in any appropriate appropriation Act other than the annual District of Columbia appropriation act, such sums as may be necessary to carry out the provisions of sections 1-1001 to 1-1010, any existing provisions of law to the contrary notwithstanding. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; July 19, 1952, 66 Stat. 791, ch. 949, § 1.)

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1011 [20:1532]. Acquisition of land by commission—Advice of Commission of Fine Arts—Approval of President.

Said commission or a majority thereof is authorized and directed to acquire such lands as in its judgment shall be necessary and desirable in the District of Columbia and adjacent areas in Maryland and Virginia, within the limits of the appropriations made for such purposes, for suitable development of the National Capital park, parkway, and playground system. Said commission is authorized to acquire such lands by purchase when they can be acquired at prices reasonable in the judgment of said commission, otherwise by condemnation proceedings, such proceedings to acquire lands within the District of Columbia to be in accordance with the provisions of section 120 of title 40 of the Code of the Laws of the United States, the Chief of Engineers of the Army being, for the purposes of sections 1-1001 to 1-1013, hereby clothed with all the power vested by section 120 of title 40 of the Code of the Laws of the United States in the board thereby created. Said commission is hereby authorized to acquire such lands, located in Maryland or Virginia, either by purchase or condemnation proceedings, by such arrangements as to acquisition and payment for the lands as it shall determine upon by agreement with the proper officials of the States of Maryland and Virginia. In the selection of lands to be acquired the advice of the Commission of Fine Arts shall be requested. The designation of all lands to be acquired by condemnation, all contracts for purchase of lands, and all agreements between said commission and the officials of the States of Maryland and Virginia shall be subject to the approval of the President of the United States. (June 6, 1924, 43 Stat. 463, ch. 270, § 2, as renumbered § 11; July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

TRANSFER OF FUNCTIONS

The commission referred to within the section was the National Capital Park and Planning Commission. The duties of that commission were transferred to the National Capital Planning Commission by the act of July 19, 1952. See section 1-1009.

§ 1-1012 [20:1535]. Appropriation for acquisition of such lands—Control—Use.

There is authorized to be appropriated, each year, in the annual District of Columbia appropriation act, a sum not exceeding 1 cent for each inhabitant

of the continental United States as determined by the last preceding decennial census, said sum to be used by said commission for the payment of its expenses and for the acquisition of the lands herein authorized to be acquired by said commission for the purposes named, the compensation for the land, the expense of surveys, ascertainment of title, condemnation proceedings, if any, and necessary conveyancing to be paid from said appropriations. The funds so appropriated shall be paid from the revenues of the District of Columbia and the general funds of the Treasury in the same proportion as other expenses of the District of Columbia. The land so acquired within the District of Columbia shall be a part of the park system of the District of Columbia and be under control of the Director of the National Park Service. Areas suitable for playground purposes may, in the discretion of said commission, be assigned to the control of the Commissioners of the District of Columbia for playground purposes. The land so acquired outside the District of Columbia shall be controlled as determined by agreement between said commission and the proper officers of the States of Maryland and Virginia, such agreements to be subject to the approval of the President. (June 6, 1924, 43 Stat. 463, ch. 270, § 3, as renumbered § 12; Ex. ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

TRANSFER OF FUNCTIONS

The commission referred to within the section was the National Capital Park and Planning Commission. The duties of that commission were transferred to the National Capital Planning Commission by the act of July 19, 1952. See section 1-1009.

COMPILER'S NOTE

See note following section 1-1001.

§ 1-1013 [20:1536]. Report of commission to Congress—Estimate for Bureau of the Budget.

Said commission shall report to Congress annually on the first Monday of December the lands acquired during the preceding fiscal year, the method of acquisition, and the cost of each tract. It shall also submit to the Bureau of the Budget on or before September 15 of each year its estimate of the total sum to be appropriated for expenditure under the provisions of sections 1-1001 to 1-1013 during the succeeding fiscal year. (June 6, 1924, 43 Stat. 464, ch. 270, § 4, as renumbered § 13; July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

TRANSFER OF FUNCTIONS

The commission referred to within the section was the National Capital Park and Planning Commission. The duties of that commission were transferred to the National Capital Planning Commission by the act of July 19, 1952. See section 1-1009.

COMPILER'S NOTE

See note following section 1-1001.

Chapter 11.—ELECTIONS**Sec.**

- 1-1101. Election of officials of political parties.
- 1-1102. Definitions.
- 1-1103. Board of elections—Terms of office.
- 1-1104. Qualifications and compensation of members.
- 1-1105. Functions and authority of Board.

Sec.

- 1-1106. Board independent agency—District to furnish facilities to Board.
- 1-1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.
- 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot.
- 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped voters.
- 1-1110. Date for holding elections—Voting hours—Method of deciding tie votes—Naming successor to deceased official.
- 1-1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to United States District Court—Grounds for voiding election.
- 1-1112. Interference with registration and voting.
- 1-1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.
- 1-1114. False registration, fraud and other corrupt practices in elections—Penalties.

§ 1-1101. Election of officials of political parties.

The following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

- (1) National committeemen and national committee women;
- (2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;
- (3) Alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and
- (4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1.)

§ 1-1102. Definitions.

For the purposes of this chapter—

- (1) The term "District" means the District of Columbia.
- (2) The term "qualified elector" means a citizen of the United States (a) who does not claim voting residence or right to vote in any State or Territory, and who has resided in the District continuously since the beginning of the one-year period ending on the day of the next election, or, if such period has not begun, resides in the District; (b) who is, or will be on the day of the next election, twenty-one years old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.
- (3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1-1103. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2.)

§ 1-1103. Board of elections—Terms of office.

There is hereby created a Board of Elections for the District of Columbia, to be composed of three

members appointed by the Commissioners of the District of Columbia. The first terms of offices on the Board shall expire, as designated by the Commissioners, one at the close of December 31 of each of the first three years which begin after August 12, 1955. Subsequent terms of each such office shall be three years beginning January 1 following the expiration of the preceding term of such office. Any person appointed to fill a vacant office shall be appointed only for the unexpired term of such office. Until his successor is appointed and has qualified, a member may continue to serve even though the term of the office to which he was appointed has expired. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3.)

§ 1-1104. Qualifications and compensation of members.

(a) No person shall be a member of the Board unless he qualifies as an elector and resides in the District. No person may be appointed to the Board unless he has resided in the District continuously since the beginning of the three-year period ending on the day he is appointed. Members of the Board shall hold no other paid office or employment in the District government and shall hold no active office, position or employment in the Federal Government. Not more than two members shall be members of the same political party.

(b) Each member of the Board shall be paid compensation of \$25 per day while performing duties under this chapter. Except as provided in subsection (a) no person shall be ineligible to serve or to receive compensation as a member of the Board because he occupies another office or position or because he receives compensation (including retirement compensation) from another source. The right to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of the Board, or as an employee of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 4.)

§ 1-1105. Functions and authority of Board.

- (a) The Board shall—
 - (1) maintain a permanent registry, keeping it accurate and current.
 - (2) conduct registrations and elections;
 - (3) print, distribute, and count ballots, or provide and operate suitable voting machines;
 - (4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons;
 - (5) operate polling places;
 - (6) certify nominees and the results of elections; and
 - (7) perform such other duties as are imposed upon it by this chapter.
- (b) The Board, and persons authorized by it, may administer oaths to persons executing affidavits pursuant to sections 1-1107 and 1-1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(c) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter.

(d) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioners of the District of Columbia, without reference to the provisions of the Classification Act of 1949, as amended. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5.)

§ 1-1106. Board independent agency—District to furnish facilities to Board.

(a) In the performance of its duties, the Board shall not be subject to the direction of any non-judicial officer of the District.

(b) The District government shall furnish to the Board, upon request of the Board, such space and facilities as are available in public buildings in the District to be used as registration or polling places, and such records, information, services, personnel, offices, and equipment, and such other assistance and facilities, as may be necessary to enable the Board properly to perform its functions. Subject to the approval of the Commissioners of the District of Columbia, privately owned space, facilities and equipment may be rented for the registration, polling, and other functions of the Board. (Aug. 12, 1955, 69 Stat. 700, ch. 682, § 6.)

§ 1-1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.

(a) No person shall vote in any election in the District unless he is a qualified elector and, except as provided in subsection (e), is registered in the District.

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he has resided in the District continuously since the beginning of the nine-month period ending on the day he offers to register; and

(3) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c), showing his political affiliation, and that he meets each of the requirements specified in section 1-1102 (2) for a qualified elector as well as the requirement of paragraph (2) of this subsection.

(c) In administering the provisions of subsection (b) (3), the Board shall prepare and use a registration affidavit form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b)

(d) The registry shall be kept open except during the fifteen-day period ending on the first Tuesday in May of each presidential election year, and except as provided by the Board in the case of a special election. While the registry is open, any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may cast a ballot marked "challenged", as provided in section 1-1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 682, § 7.)

§ 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot.

(a) Candidates for office participating in an election held pursuant to this chapter shall be the persons registered under section 1-1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than thirty days before the date of the election; and

(2) signed by not less than one hundred voters, registered under section 1-1107, and of the same political party as the nominee.

(b) No person shall hold elected office pursuant to this chapter unless he has been a bona fide resident of the District of Columbia continuously since the beginning of the three-year period ending on the date of the next election, and is a qualified elector registered under section 1-1107.

(c) The Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote for the candidates duly qualified and nominated for election by such party under this chapter; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8.)

§ 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped voters.

(a) Voting in all elections shall be secret. Voting may be by paper ballot or voting machine.

(b) The ballot of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his registration is located.

(c) Each qualified candidate may have a watcher at each polling place, provided the watcher presents proper credentials signed by the candidate. No

one shall interfere with the opportunity of a watcher to observe the conduct of the election at that polling place and the counting of votes. Watchers may challenge prospective voters who are believed to be unqualified to vote.

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he shall allow the voter to cast a paper ballot marked "challenged". Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e).

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the municipal court of the District of Columbia. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be stricken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) If the official in charge of the polling place is satisfied that a qualified elector is unable to record his vote by marking the ballot or operating the voting machine, two officials of the polling place shall on the request of the voter enter the voting booth and vote as directed. The officials shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g) No person shall vote more than once in any election nor in an election held by a political party other than that to which he has declared himself to be a member.

(h) Copies of the regulations of the Board with respect to voting shall be made available to prospective voters at each polling place. (Aug. 12, 1955, 69 Stat. 702, ch. 682, § 9.)

§ 1-1110. Date for holding elections—Voting hours—Method of deciding tie votes—Naming successor to deceased official.

(a) The elections of the officials referred to in clauses (1), (2), and (3) of section 1-1101 and of officials designated pursuant to clause (4) of such section shall be held on the first Tuesday in May of each presidential election year. Any such election shall be conducted by the Board in conformity with the provisions of this chapter. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election days.

(b) Candidates receiving the highest number of votes in said election shall be declared the winners.

(c) In the case of a tie, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board,

but not sooner than ten days following the election, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official elected pursuant to this chapter dies during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized local committee. (Aug. 12, 1955, 69 Stat. 702, ch. 682, § 10.)

§ 1-1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to United States District Court—Grounds for voiding election.

(a) If, within seven days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in one or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of \$20 for each precinct petitioned to be recounted. If the cost of the recount is less than \$20 per precinct, the difference shall be refunded. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. Such recounts shall be conducted in the manner prescribed by the Board by regulation.

(b) Within seven days after the Board certifies the results of an election, any person who voted in the election may petition the United States District Court for the District of Columbia to review such election. In response to such a petition, the court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a). The court shall void an election only for fraud, mistake, the making of expenditures by a candidate in violation of this chapter, or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such court shall be final and not appealable. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11.)

§ 1-1112. Interference with registration and voting.

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12.)

§ 1-1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.

(a) There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to carry out the purposes of this chapter.

(b) Subject to the penalties provided in this chapter, a candidate for national committeeman, national committeewoman, delegate, or alternate, in his campaign for election, shall not make expenditures in excess of \$2,500.

(c) No independent committee or party committee shall receive contributions aggregating more than \$100,000, or make expenditures aggregating more than \$100,000 for any campaign covered by this chapter.

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of \$5,000 in connection with any campaign for election of any national committeeman, national committeewoman, delegate, or alternate.

(e) Every candidate and independent committee or party committee shall, within ten days after the election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 13.)

§ 1-1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his place of residence or his voting privilege in any other part of the United States, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in such elections, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than \$500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14.)

Chapter 12.—PRESIDENTIAL INAUGURAL CEREMONIES

- Sec.
- 1-1201. Definitions.
 - 1-1202. Regulations.
 - 1-1203. Appropriations—Expenses for which same may be used.
 - 1-1204. Permits for use of grounds and reservations.
 - 1-1205. Installation of electrical facilities.
 - 1-1206. Lending of supplies by Secretary of Defense.
 - 1-1207. Permission for installation of communication facilities—When to be removed.
 - 1-1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.
 - 1-1209. Nonapplicability to property under jurisdiction of Congress.
 - 1-1210. Inauguration Day—Legal Holiday—Metropolitan area of District.

§ 1-1201. Definitions.

For the purposes of this chapter—

(1) The term “inaugural period” means the period which includes the day on which the ceremony of inaugurating the President is held, the five calendar days immediately preceding such day, and the four calendar days immediately subsequent to such day;

(2) The term “Inaugural Committee” means the committee in charge of the Presidential inaugural ceremony and functions and activities connected therewith, to be appointed by the President-elect;

(3) The term “Commissioners” means the Commissioners of the District of Columbia or their designated agent or agents;

(4) The term “Secretary of Defense” means the Secretary of Defense or his designated agent or agents; and

(5) The term “Secretary of the Interior” means the Secretary of the Interior or his designated agent or agents. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 1 (b).)

POPULAR NAME

1956—Section 1 (a) of the act of August 6, 1956, cited to text, provides, “That this Act may be cited as the ‘Presidential Inaugural Ceremonies Act.’”

§ 1-1202. Regulations.

For each inaugural period the Commissioners are authorized and directed to make all reasonable regulations necessary to secure the preservation of public order and protection of life, health, and property; to make special regulations respecting the standing, movement, and operation of vehicles of whatever character or kind during said period; and to grant, under such conditions as they may impose, special licenses to peddlers and vendors for the privilege of selling goods, wares, and merchandise in such places in the District of Columbia, and to charge such fees for such privilege, as they may deem proper. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 2.)

§ 1-1203. Appropriations—Expenses for which same may be used.

There are hereby authorized to be appropriated such sums as may be necessary, payable in like manner as other appropriations for the expenses of the District of Columbia, to enable the Commissioners to provide additional municipal services in

said District during the inaugural period, including employment of personal services without regard to the civil-service and classification laws; travel expenses of enforcement personnel from other jurisdictions; hire of means of transportation; meals for policemen and firemen, cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and other incidental expenses in the discretion of the Commissioners. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 3.)

§ 1-1204. Permits for use of grounds and reservations.

The Secretary of the Interior, with the approval of such officer as may exercise jurisdiction over any of the Federal reservations or grounds in the District of Columbia, is authorized to grant to the Inaugural Committee permits for the use of such reservations or grounds during the inaugural period, including a reasonable time prior and subsequent thereto; and the Commissioners are authorized to grant like permits for the use of public space under their jurisdiction. Each such permit shall be subject to such restrictions, terms, and conditions as may be imposed by the grantor of such permit. With respect to public space, no reviewing stand or any stand or structure for the sale of goods, wares, merchandise, food, or drink shall be built on any sidewalk, street, park, reservation, or other public grounds in the District of Columbia, except with the approval of the Inaugural Committee, and with the approval of the Secretary of the Interior or the Commissioners, as the case may be, depending on the location of such stand or structure. The reservation, ground, or public space occupied by any such stand or structure shall, after the inaugural period, be promptly restored to its previous condition. The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage to such property and against any liability arising from the use of such property, either by the Inaugural Committee or a licensee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 4.)

§ 1-1205. Installation of electrical facilities.

The Commissioners are authorized to permit the Inaugural Committee to install suitable overhead conductors and install suitable lighting or other electrical facilities, with adequate supports, for illumination or other purposes. If it should be necessary to place wires for illuminating or other purposes over any park or reservation in the District of Columbia, such placing of wires and their removal shall be under the supervision of the official in charge of said park or reservation. Such conductors with their supports shall be removed within five days after the end of the inaugural period. The Commissioners, or such other officials as may have jurisdiction in the premises, shall enforce the provisions of this joint resolution, take needful precautions for the protection of the public, and insure

that the pavement of any street, sidewalk, avenue, or alley which is disturbed or damaged is restored to its previous condition. No expense or damage from the installation, operation, or removal of said temporary overhead conductors or said illumination or other electrical facilities shall be incurred by the United States or the District of Columbia, and the Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage and against any liability whatsoever arising from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 5.)

§ 1-1206. Lending of supplies by Secretary of Defense.

The Secretary of Defense is authorized to lend to the Inaugural Committee such hospital tents, smaller tents, camp appliances, hospital furniture, ensigns, flags, ambulances, drivers, stretchers, and Red Cross flags and poles (except battle flags) as may be spared without detriment to the public service, and under such conditions as he may prescribe. Such loan shall be returned within five days after the end of the inaugural period, the Inaugural Committee shall indemnify the Government for any loss or damage to any such property, and no expense shall be incurred by the United States Government for the delivery, return, rehabilitation, replacement, or operation of such equipment. The Inaugural Committee shall give a good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 6.)

§ 1-1207. Permission for installation of communication facilities—When to be removed.

The Commissioners, the Secretary of the Interior, and the Inaugural Committee are authorized to permit telegraph, telephone, radio-broadcasting, and television companies to extend overhead wires to such points along the line of any parade as shall be deemed convenient for use in connection with such parade and other inaugural purposes. Such wires shall be removed within ten days after the conclusion of the inaugural period. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 7.)

§ 1-1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.

The regulations and licenses authorized by this chapter shall be in full force and effect only during the inaugural period. Such regulations shall be published in one or more of the daily newspapers published in the District of Columbia and no penalty prescribed for the violation of any such regulation shall be enforced until five days after such publication. Any person violating any regulation promulgated by the Commissioners under the authority of this chapter shall be fined not more than \$100 or imprisoned for not more than thirty days.

Each and every day a violation of any such regulation exists shall constitute a separate offense, and the penalty prescribed shall be applicable to each such separate offense. (Aug. 6, 1956, 70 Stat, 1051, ch. 974, § 8.)

§ 1-1209. Nonapplicability to property under jurisdiction of Congress.

Nothing contained in this chapter shall be applicable to the United States Capitol Buildings or Grounds or other properties under the jurisdiction of the Congress or any committee, commission or officer thereof: *Provided, however,* That any of the services or facilities authorized by or under this chapter shall be made available with respect to any such properties upon request or approval of the joint committee of the Senate and House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives to make the necessary arrangements for the Inauguration of the President-elect and the Vice President-elect. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 9.)

§ 1-1210. Inauguration Day—Legal Holiday—Metropolitan area of District.

The 20th day of January 1957 and the 20th day of January in every fourth year thereafter, known as Inauguration Day, is hereby made a legal holiday in the metropolitan area of the District of Columbia for the purpose of all statutes relating to the compensation and leave of employees of the United States, including the legislative and judicial branches, and of the District of Columbia, employed in such area: *Provided, however,* That whenever the 20th day of January in any such year shall fall on a Sunday, the next succeeding day selected for the public observance of the inauguration of the President of the United States shall be considered a legal holiday as provided by this section.

For the purposes of this section, the term "metropolitan area of the District of Columbia" shall include, in addition to the District of Columbia, Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the cities of Alexandria and Falls Church, Virginia. (Jan. 11, 1957, 71 Stat. 3, Pub. L. 85-1, §§ 1, 2.)

TITLE 1.—ADMINISTRATION, APPENDIX

REORGANIZATION PLAN AND ORDERS FOR DISTRICT OF COLUMBIA

REORGANIZATION PLAN NO. 5 OF 1952

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 1, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949. [Reorganization Act of 1949, 63 Stat. 203 as amended, is set forth in sections 133z to 133z-15 of Title 5, United States Code.]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

SECTION 1. Functions transferred to the Board of Commissioners.—There are hereby transferred to the Board of Commissioners of the District of Columbia (hereafter in this reorganization plan referred to as the Board of Commissioners) all functions of the following named offices and agencies of the Government of the District of Columbia, including in the case of each the functions of all officers, employees, and subordinate agencies:

Alcoholic Beverage Control Board
Anatomical Board
Board of Accountancy
Board of Assistant Assessors
Board of Barber Examiners for the District of Columbia
Board for the Condemnation of Dangerous and Unsafe Buildings
Board for the Condemnation of Insanitary Buildings in the District of Columbia
Board of Dental Examiners
Board of Equalization and Review
Board of Examiners and Registrars of Architects
Board of Examiners of Steam and other Operating Engineers
Board of Examiners of Veterinary Medicine
Board of Optometry
Board of Parole
Board of Pharmacy
Board of Podiatry Examiners
Board of Police and Fire Surgeons
Board of Public Welfare
Board of Revocation and Review of Hackers Identification Cards
Board of Revocation, Suspension and Restoration of Operators Permits
Board of Special Appeals
Board of Tax Appeals
Bridge Division
Budget Office
Building Inspection Division
Central Garage and Shops
Central Permit Bureau
Commission on Licensure to Practice the Healing Art in the District of Columbia
Committee on Special Assessment Appeals
Construction Division
Department of Construction
Department of Corrections
Department of Highways
Department of Inspections
Department of Insurance
Department of Sanitary Engineering
Department of Vehicles and Traffic
Department of Weights, Measures, and Markets
Disbursing Office
District Boxing Commission

District of Columbia Board of Cosmetology
District of Columbia Board of Registration for Professional Engineers
District of Columbia Educational Agency for Surplus Property
District of Columbia Pound
District of Columbia Repair Shop
District Personnel Board
District Unemployment Compensation Board
Division of Printing and Publications
Electrical Division
Electrical Examining Board
Electrical Inspection Division
Elevator Inspection Division
Executive Office of the Board of Commissioners of the District of Columbia
Fire Department
Fire Safety Division
Fire Trial Board
Gallinger Municipal Hospital
Glenn Dale Sanatorium
Health Department
License Bureau
Metropolitan Police Department
Minimum Wage and Industrial Safety Board
Motion-Picture Operators Examining Board
Motor Vehicle Parking Agency
Municipal Architect
Nurses Examining Board
Office of the Administrator of Rent Control
Office of the Assessor
Office of the Auditor
Office of the Chief Clerk, Public Works
Office of Civil Defense
Office of the Collector of Taxes
Office of the Coroner
Office of the Corporation Counsel
Office of the Secretary to the Board of Commissioners of the District of Columbia
Office of the Surveyor
Office of the Water Registrar
Plumbing Board
Plumbing Inspection Division
Police and Firemen's Retiring and Relief Board
Police Trial Board
Purchasing Office
Real Estate Commission
Registrar of Titles and Tags
Sanitation Division
Sewage Treatment Plant
Sewer Division
Smoke and Boiler Inspection Division
Street Division
Superintendent of District Buildings
Trees and Parking Division
Tuberculosis Hospital
Undertakers' Examining Committee
Veterans' Service Center
Water Division

SEC. 2. Abolition of agencies.—(a) The offices and agencies listed in section 1 hereof, including the offices of the heads of such agencies, are abolished. The provisions of the foregoing sentence with respect to any such office or agency shall become effective at such time as the Board of Commissioners shall specify, but in no event later than June 30, 1953.

(b) The Office of People's Counsel established by section 3 of the act of December 15, 1926 (D. C. Code, 1940 edition, sec. 43-205) and its functions are abolished.

(c) The Board of Commissioners shall make such provisions as the said Board may deem necessary with respect to winding up the affairs of any office or agency abolished by the provisions of this section.

SEC. 3. Performance of functions of Board.—(a) Except as otherwise provided in this section, the Board of Commissioners is hereby authorized to make from time to time such provisions as it deems appropriate to authorize the performance of any of its functions, including any function transferred to or otherwise vested in the Board of Commissioners by this reorganization plan, by any member of the Board of Commissioners, or by any other officer, employee, or agency of the Government of the District of Columbia, except the courts thereof.

(b) The Board of Commissioners shall not provide for the performance by any member of the Board of Commissioners, or by any other officer, employee, or agency of: (1) any function vested in the said Board by Act of Congress with respect to making and adopting regulations except those pertaining to the administration of or procedure before any agency of the Government of the District of Columbia; (2) the function of approving any contract in excess of \$25,000; (3) the function of appointing or removing the head of any agency responsible directly to the Board of Commissioners; or (4) the function of approving the budget for the District of Columbia.

SEC. 4. Establishment of new offices.—(a) There are hereby established in the Government of the District of Columbia so many agencies and offices, and with such names or titles, as the Board of Commissioners shall from time to time determine. The said offices shall be filled by appointment by, or under the authority of, the Board of Commissioners. Each officer so appointed shall perform the functions delegated to him in accordance with this reorganization plan and shall receive compensation to be fixed in accordance with the classification laws, as now or hereafter amended, except that the compensation for not to exceed fifteen such offices at any one time may be fixed without regard to the numerical limitations on positions set forth in section 505 of the Classification Act of 1949 (5 U. S. C. 1105)

(b) There are hereby established in the Government of the District of Columbia two new offices one of which shall have the title of "Chief of Police" and the other the title of "Fire Chief." The Chief of Police and the Fire Chief shall each be appointed by the Board of Commissioners and shall each receive compensation fixed by the said Board at a rate of not in excess of \$12,800 per annum.

SEC. 5. Transfer of personnel, property, records, and funds.—With respect to personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to functions transferred, or authorized to be delegated, by the provisions hereof, the Board of Commissioners from time to time may effect such transfers between agencies of the Government of the District of Columbia (including transfers between the Board of Commissioners and any other agency of the Government of the District of Columbia) as the Board may deem necessary in order to carry out the provisions of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 5 of 1952, prepared in accordance with the provisions of the Reorganization Act of 1949. This plan will enable the Board of Commissioners of the District of Columbia to bring about a basic simplification and improvement of the government of the District of Columbia.

While the plan will reorganize the District government, it does not, and cannot under the authority conferred by the Reorganization Act, provide for home rule. As is well known, I strongly believe that the citizens of the District of Columbia are entitled to self-government. I have repeatedly recommended, and I again recommend, enactment of legislation to provide home rule for the District of Columbia. Local self-government is both the right and the responsibility of free men. The denial of self-government does not befit the National Capital of

the world's largest and most powerful democracy. Not only is the lack of self-government an injustice to the people of the District of Columbia, but it imposes a needless burden on the Congress and it tends to controvert the principles for which this country stands before the world.

Vigorous efforts have been made in the last four sessions of the Congress to obtain legislation providing home rule and a modern and effective governmental organization for the District of Columbia. It has been my hope that these two much-needed reforms could be accomplished in one measure. But each time the combination of the two has been used to help to defeat the legislation. As a result, the Senate last year separated the issues and passed a bill dealing only with home rule.

While I consider both home rule and reorganization essential for the District, the structure of the District government has become so complicated, confused, and obsolete that a thorough reorganization cannot further be delayed. I have concluded that the Reorganization Act of 1949 affords the most appropriate procedure for accomplishing the needed organizational improvements.

The present organization of the District government is the product of almost 80 years of piecemeal, planless growth. It has its origin in an act of 1874 which terminated self-government in the District. That act established an appointive, three-member Commission to conduct the affairs of the District until a new permanent plan of local government could be developed. Four years later, no plan having been formulated, this interim, emergency arrangement was modified slightly and made permanent. Since then the population and the functions of the District have multiplied and the structure of the District government has grown continually more complex; yet little has been done to effect a significant improvement in the organization and bring it into line with present-day requirements.

The failure to modernize the District government has not been for want of careful surveys and well-developed plans. In no community has the local government been subject to fuller or more frequent analysis. Within the last 25 years there have been no less than six comprehensive studies of the organization of the District government. While the recommendations growing out of these studies have differed in detail, all have agreed on the necessity of integrating the many activities performed by the District government.

The present organization of the District government is seriously deficient in a number of respects. The first and most obvious defect is the extraordinary number of agencies among which the business of the District is scattered. There are no less than 80 separate agencies in the government of the District of Columbia—one-third more than all the departments and agencies now in the executive branch of the Federal Government. Some of the agencies have been created by law and others by action of the Commissioners. Generally those established by the Commissioners have been recognized later in appropriation acts. Many of the activities and functions have been expanded or modified by subsequent congressional action. As a result, through the years, the legal status of many agencies has become extremely complicated and obscure.

Many District agencies are almost completely autonomous and uncontrolled. Among those agencies are about 50 boards or commissions, a considerable number of which are not even subject to budgetary control by the Board of Commissioners or the Congress; they have their own funds and operate with permanently appropriated receipts. While the Board of Commissioners is nominally the executive head of the District government, its authority over agencies ranges from complete control to virtually no control.

This plan constitutes an important first step in strengthening the organization of the government of the District of Columbia. By transferring to the Board of Commissioners the functions of most of the existing agencies, abolishing those agencies, and granting the Board broad authority to delegate its functions, the plan permits a major realignment of the administrative structure of the District government. It is the intention of

the Board of Commissioners to assign the functions of many of the existing agencies to a much smaller number of departments.

A few District agencies are excluded from the operation of the plan. Principal of these are the judicial agencies, which are not subject to the Reorganization Act, the National Guard, the Board of Library Trustees, the Board of Education, the Zoning Board, the Recreation Board, and the Public Utilities Commission.

The plan empowers the Board of Commissioners to provide for the performance of most of its executive functions by officers, agencies, and employees of the District government. This provision authorizes appropriate delegation of authority, both with and without the right of redelegation as the Commissioners may decide, and the withdrawal or modification of such delegation at any time. Regulatory functions vested in the Commissioners by statute are to be retained in the Board of Commissioners, as well as budget control, approval of contracts in excess of \$25,000, and the appointment and removal of the heads of agencies reporting directly to the Board of Commissioners. Under all delegations the Board will, of course, retain ultimate authority and responsibility.

Like the head of any large organization, the Board of Commissioners should be given adequate top-level assistance in carrying on the operations of the District government. The success of the reorganization plan will to a considerable extent depend upon the ability to fill key positions with the best qualified persons. In order to do so it is necessary to make provision for more adequate salaries for such officers. The plan provides that not to exceed 15 officers may be compensated without regard to the numerical limitations on positions set forth in section 505 of the Classification Act of 1949, as amended. This provision will enable the Chairman of the Civil Service Commission, or the President as the case may be, to approve rates of pay for these officers in excess of the rates established in the Classification Act of 1949 for grade GS-15 whenever standards of the classification laws so permit.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 5 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2 (a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch of the Federal Government.

The plan abolishes the office of People's Counsel and its functions (sec. 3 of the act of December 15, 1926, D. C. Code, 1940 edition, sec. 43-205). These functions duplicate responsibilities of the Public Utilities Commission.

The Board of Commissioners will carry out the basic reorganization made possible by this plan as soon as practicable without disrupting the operation of the District government and will complete the reorganization no later than June 30, 1953. Thereafter organizational adjustments can be made as conditions require.

The primary benefits from this reorganization plan will take the form of improvements in administration and service. Many benefits in improved operations are to be expected in future years which will result in a reduction of expenditures as compared with those that would be otherwise necessary. Any itemization of these reductions, in advance of actual experience under this plan, is not practicable.

REORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Reorg. Ord.

Nos.

1. Redelegation of functions.
2. Citizens' Advisory Council.
3. Department of General Administration.

Reorg. Ord.

Nos.

4. Assessment for services performed by the Department of General Administration.
5. Transfer of balances.
6. Fire Chief.
7. Chief of Police.
8. Management Office.
9. Office of Chief Clerk, Public Works abolished, assignment of functions.
10. Wharf Committee.
11. Change in membership of Public Space Committee.
12. Change in membership of Wage Board.
13. Committee on Microfilming and Disposal of Obsolete Records, relief of member.
14. Bond Committee, change in membership.
15. Secretary to the Contract Board-Special Assistant, Department of General Administration.
16. District of Columbia Safety Committee, change of membership and appointment of chairman.
17. Parking Space Committee.
18. Administrative Services Office.
19. Internal Audit Office.
20. Finance Office.
21. Personnel Office.
22. Board of Revocation and Review of Hackers' Identification Licenses—Additional members.
23. Deposits of securities by insurance companies.
24. Budget Office.
25. Transfer of functions of Auditor to Finance Office.
26. Transfer of funds to Department of General Administration.
27. Office of Surveyor.
28. Department of Sanitary Engineering.
29. Procurement Office.
30. Maintenance, preservation and disposal of records of all components of the District of Columbia Government covered by Reorganization Plan No. 5 of 1952.
31. Police and Firemen's Retirement and Relief Board.
32. District of Columbia Department of Veterans' Affairs.
33. Board of Parole.
34. Department of Corrections.
35. Alcoholic Beverage Control Board.
36. Minimum Wage and Industrial Safety Board.
37. District Unemployment Compensation Board.
38. Fire Department.
39. Fire Trial Boards.
40. Executive Office of the Board of Commissioners.
41. Office of the Secretary.
42. Department of Buildings and Grounds.
43. Department of Insurance.
44. Office of the Administrator of Rent Control.
45. Citizens' Civil Defense Advisory Council.
46. Metropolitan Police Department.
47. Board of Police and Fire Surgeons.
48. Police Trial and Review Boards.
49. Office of Civil Defense.
50. Office of the Corporation Counsel.
51. Office of the Coroner.
52. District of Columbia Pound.
53. Department of Highways.
54. Department of Vehicles and Traffic.
55. Department of Licenses and Inspections.
56. Board of the Condemnation of Insanitary Buildings.
57. Department of Public Health.
58. Board of Public Welfare.
59. Boards, Commissions and Committee.
60. Public Health Advisory Council.
61. Public Welfare Advisory Council.

REORGANIZATION ORDER NO. 1.—REDELEGATION OF FUNCTIONS

Reorg. Ord. No. 1, C. O. 302, 853/11, July 1, 1952, ordered that: All functions, duties, powers and authority vested in any officer, agency, or employee of the Government of the District of Columbia at the time of the taking effect of Reorganization Plan No. 5 of 1952, and which were transferred to the Board of Commissioners of the District of Columbia by said Plan, are hereby delegated to, and shall, until otherwise ordered, continue to be vested in, such officer, agency or employee.

REORGANIZATION ORDER NO. 2—CITIZENS' ADVISORY COUNCIL

Reorg. Ord. No. 1, C. O. 302,853/11, July 1, 1952, ordered amended January 21, 1954, ordered that: There is hereby created in the Government of the District of Columbia a permanent committee of citizens to be known as the Citizens' Advisory Council.

1. *Purpose.*—To increase citizen participation in the municipal government and to act in an advisory capacity to the Commissioners on matters affecting the general public.

2. *Function.*—To advise the Board of Commissioners on such matters as it may refer to the Council, relative to proposed legislation, regulations affecting the public, matters of fiscal policy including the annual budget, and such other matters of broad public policy as may be determined by the Commissioners. In addition the Council may submit to the Commissioners recommendations on other matters of its own choosing from time to time.

3. *Composition.*—To consist of 9 members, selected by the Board of Commissioners on the basis of personal qualification. There shall be no ex officio members, and no members representing any special interest. Members shall hold no full-time office for which compensation is paid from funds of the District of Columbia. No person shall serve more than two consecutive terms, but may be reappointed after a lapse of one year.

4. *Term of Office.*—To be fixed at three years except for initial appointments, as specified below. One-third of the members shall be appointed at the beginning of each fiscal year. Should a vacancy occur through the death, incapacity or removal of a member, a successor shall be appointed to complete the unexpired term of that member.

5. *Oath of Office.*—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Citizens' Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

6. *Compensation.*—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

7. *Organization.*—The Secretary to the Board of Commissioners shall serve as the Secretary to the Council, but shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization and name its own officers. The Council shall meet at least once a month. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

8. *Administration.*—The Secretary to the Board of Commissioners is responsible for the administration, files, and housekeeping problems of the Council; and will provide the necessary stenographic and clerical services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be met from funds provided for the administration of District affairs.

9. *Reports.*—Reports and recommendations of the Council acting as an advisory body to the Commissioners on budget and personnel matters and other matters on which release of information is forbidden by statute shall be furnished only to the Board of Commissioners. The Chairman of the Council in his discretion is hereby authorized to release to the press and to the public generally, before reporting thereon to the Commissioners, the reports and recommendations of the Council on other matters on which action has been taken. The restrictions upon the activities of the Council imposed by this

order do not limit the independence of action as a citizen of any individual serving on the Council.

Effective upon taking the Oath of Office the following citizens, having signified their willingness to serve, are hereby appointed to the Citizens' Advisory Council:

1. *To serve until July 1, 1955.*—Mr. Robert V. Fleming, Mr. Woolsey W. Hall, Mr. William E. Leahy.

2. *To serve until July 1, 1954.*—Mr. Joseph A. Kaufmann, Mr. Thornton W. Owen, Mr. James C. Turner.

3. *To serve until July 1, 1953.*—Dr. Edward C. Mazique, Mr. William J. Smith, Mrs. George C. Thorpe.

The initial meeting of the Council will take place at _____ in Room 500 of the District Building; at which time the Oath of Office will be administered to the members of the Council. Interested citizens, members of Congress, and District officials are invited to be present. Thereafter the Council will organize, select its officers, and appoint one of its members to meet with District officials to arrange for space and other requirements of the Council.

REORGANIZATION ORDER NO. 3.—DEPARTMENT OF GENERAL ADMINISTRATION

Reorg. Ord. No. 3, C. O. 302,970, August 28, 1952, ordered:

1. That there is hereby established in the Government of the District of Columbia, under the direction and control of the Board of Commissioners, a new agency, "The Department of General Administration," headed by the new office of "Director of General Administration" (hereinafter referred to as "Director"). There is also established the corresponding new position of "Director, Department of General Administration," which position is allocated in bureau number 65-1-1, grade GS-301-17-1.

2a. There are hereby transferred to the Director all functions of the following named offices and agencies (hereinafter referred to as agencies) including in the case of each the functions, duties, powers and authorities of all officers, employees, and subordinate agencies:

Budget Office,
Disbursing Office,
District of Columbia Educational Agency for Surplus Property,
District Personnel Board,
Division of Printing and Publications,
Office of the Assessor,
Board of Assistant Assessors,
Board of Equalization and Review,
Committee on Special Assessment Appeals,
Office of the Auditor,
Office of the Collector of Taxes,
Police and Firemen's Retiring and Relief Board,
Purchasing Office.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations and other funds available or to be made available relating to functions transferred, are hereby transferred to the Department of General Administration and the Director from time to time may effect such transfers between such agencies as he deems necessary. Until otherwise ordered by the Director such agencies, including all functions, duties, powers and authorities vested therein or in any officer, employee or subordinate agency thereof, shall continue to function as presently constituted, but as subordinate agencies of the Department of General Administration and subject to the direction and control of the Director.

3. Except as otherwise provided by the Board of Commissioners, the Director is hereby authorized to make from time to time such provisions as he deems appropriate to authorize the performance of any functions of any agency of the Department of General Administration by any officer, employee, or agency of the Department of General Administration.

4. There are hereby established in the Department of General Administration so many agencies and offices, and with such names or titles, as the Director shall from time to time determine. Such offices shall be filled by or under the authority of the Director. Each officer so appointed

shall perform the functions delegated to him and shall receive compensation to be fixed in accordance with the classification laws, as now or hereafter amended.

5. Notwithstanding any other provisions of this Order, the following shall not be effected without the prior approval of the Board of Commissioners:

a. Changes from the basic reorganization plan approved by the Commissioners, as described in the "Hearing Before the Committee on Government Operations, United States Senate, on the Reorganization of the District of Columbia," May 15 and 20, 1952.

b. Appoint, promote or remove employees in grade 10 or above.

c. Transfer of funds between appropriations.

6. This order shall be effective on and after September 2, 1952. By order of the Board of Commissioners, D. C.

REORGANIZATION ORDER NO. 4.—ASSESSMENT FOR SERVICES PERFORMED BY THE DEPARTMENT OF GENERAL ADMINISTRATION

[Text Omitted]

This order provided that the appropriations of named departments and agencies of the Government of the District of Columbia would be assessed in specified amounts for services performed for them by the Department of General Administration.

REORGANIZATION ORDER NO. 5.—TRANSFER OF BALANCES

[Text Omitted]

This order provided for a transfer of balances to the Department of General Administration.

REORGANIZATION ORDER NO. 6.—FIRE CHIEF

Reorg. Ord. No. 6, C. O. 302,853/14, September 16, 1952, ordered that:

Section 1. All functions, duties, powers and authority now vested in the Chief Engineer of the Fire Department are hereby transferred to and vested in the Fire Chief.

Section 2. Millard H. Sutton, Chief Engineer of the Fire Department, is hereby appointed Fire Chief and shall receive compensation at the rate of \$12,000 per annum, and hereafter, any Fire Chief who has not attained the maximum scheduled rate of compensation in which his position has been placed, shall be advanced in compensation successively at the rate of \$200 per annum at the beginning of the next pay period following the completion of each 18 months of service, not to exceed the rate of \$12,800 per annum.

Section 3. The office of the Chief Engineer of the Fire Department is hereby abolished.

Section 4. (a) The Deputy Chief Engineer of the Fire Department shall hereafter be designated and known as the "Deputy Fire Chief".

(b) The Battalion Chief Engineer of the Fire Department shall hereafter be designated and known as the "Battalion Fire Chief".

Section 5. This order shall become effective September 16, 1952.

REORGANIZATION ORDER NO. 7.—CHIEF OF POLICE

Reorg. Ord. No. 7, C. O. 302,853/14, September 16, 1952, ordered that:

Section 1. All functions, duties, powers and authority now vested in the Major and Superintendent of the Metropolitan Police Department are hereby transferred to and vested in the Chief of Police.

Section 2. Robert V. Murray, Major and Superintendent of the Metropolitan Police Department, is hereby appointed Chief of Police and shall receive compensation at the base rate of \$12,000 per annum, and hereafter, any Chief of Police who has not attained the maximum scheduled rate of compensation in which his position has been placed, shall be advanced in compensation successively at the rate of \$200 per annum at the beginning of the next pay period following the completion of each 18 months of service, not to exceed the rate of \$12,800 per annum.

Section 3. The office of the Major and Superintendent of the Metropolitan Police Department is hereby abolished.

Section 4. (a) The Assistant Superintendent, Executive Officer, of the Metropolitan Police Department shall hereafter be designated and known as the "Deputy Chief of Police, Executive Officer".

(b) Each Assistant Superintendent of the Metropolitan Police Department, other than those named in paragraphs (a) and (c) of this section, shall hereafter be designated and known as "Deputy Chief of Police".

(c) The Assistant Superintendent of the Metropolitan Police Department in command of the Detective Bureau shall hereafter be designated and known as the "Deputy Chief of Police, Chief of Detectives."

Section 5. This order shall become effective September 16, 1952.

REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE

Reorg. Ord. No. 8, C. O. 302,970.a, September 25, 1952, ordered that:

1. (a) There is hereby established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, a "Management Office" headed by a "Management Officer".

(b) The management office is established for the purpose of planning, developing, coordinating, and directing the management program and related management activities for the District of Columbia Government, covering the complete range of functions contained therein, with the major objectives of economy and increased efficiency. This office shall also be responsible for making studies and recommendations for developing the organizational structure, distribution and redistribution of functions, lines of authority, staffing, space, methods and procedures necessary for an orderly implementation of Reorganization Plan No. 5 of 1952, requiring a thorough study of existing agencies and departments of the District of Columbia Government and the integration into new staff and operating departments of all functions of the organization to assure efficient and economical operations.

2. (a) There are hereby transferred to the Management Officer all the functions of the Management Section of the Budget Office, including the functions, duties, powers and authorities of all employees therein.

(b) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions transferred are hereby transferred to the Management Office.

(c) The existing Management Section of the Budget Office is hereby abolished.

3. There are hereby established in the Management Office so many sections and positions with such names or titles as the Director of General Administration and the Management Officer shall from time to time determine. All positions in such sections shall be filled by or under the authority of the Director of General Administration subject to the prior approval of the Board of Commissioners to appoint, promote or remove employees in grade 10 or above.

4. Except as otherwise provided by the Board of Commissioners or the Director of General Administration, the Management Officer is hereby authorized to make from time to time such provisions as he deems appropriate to authorize the performance of any functions of the Management Office by any officer or employee thereof.

5. This order shall become effective on and after September 29, 1952.

REORGANIZATION ORDER NO. 9.—OFFICE OF CHIEF CLERK, PUBLIC WORKS ABOLISHED, ASSIGNMENT OF FUNCTIONS

Reorg. Ord. No. 9, C. O. 302,970/5, September 25, 1952, ordered:

That pursuant to authority contained in Reorganization Plan No. 5 of 1952, it is hereby ordered that the Office of Chief Clerk, Public Works, is abolished and its

functions, duties, powers, and authorities, together with the related personnel, property, records and funds are assigned as follows:

1. Contracts and Bond Section to Department of General Administration:

Positions involved:

Grade	Bu. No.	Title
GS-9	11-9-2	Asst. Chief Clerk
GS-6	11-9-7	Sr. Clerk
GS-4	11-9-4	Clerk
GS-4	11-9-19	Clerk-Stenographer
GS-4	11-9-9	Clerk-Stenographer
GS-3	11-9-14	Clerk-Typist

2. Records Section to Department of General Administration:

Positions involved:

Grade	Bu. No.	Title
GS-4	11-9-3	Clerk
GS-3	11-9-10	File Clerk
GS-3	11-9-11	Clerk-Typist
CPC-3	11-9-13	Messenger

3. Safety Section to Department of General Administration:

Position involved:

Grade	Bu. No.	Title
GS-7	11-9-15	Safety Engineer

4. Wage Board Section to Department of General Administration:

Position involved:

Grade	Bu. No.	Title
GS-4	11-9-12	Clerk-Personnel

5. Special Section:

a. That portion pertaining to secretarial service furnished the Office of the Engineer Commissioner to the Executive Office.

Positions involved:

Grade	Bu. No.	Title
GS-5	11-9-5	Secretary
GS-5	11-9-8	Secretary

b. That portion pertaining to the clerical service furnished the Central Permit Bureau to that office.

Positions involved:

Grade	Bu. No.	Title
GS-5	11-9-17	Chief Counter Clerk
GS-4	11-9-18	Asst. Ch. Counter Clerk

6. Wharves Administration:

a. All responsibility for repairs and maintenance to the Bridge Division of the Highway Department, subject to reimbursement from the General Fund.

b. All functions, property, records and all available funds related to the supervision and leasing of the Wharves and also including funds for repairs and maintenance to the Property Acquisition and Survey Section, Office of the Auditor.

7. All positions not herein transferred, be abolished.

Positions involved:

Grade	Bu. No.	Title
GS-12	11-9-1	Chief Clerk
GS-2	11-9-6	Clerk-Typist

8. All funds not otherwise allocated herein, are transferred to the Department of General Administration for appropriate disposition pursuant to law and regulations.

9. This order shall be effective on and after September 29, 1952.

REORGANIZATION ORDER NO. 10.—WHARF COMMITTEE

[Text Omitted]

This order relieved a member and appointed a substitute member of the committee.

REORGANIZATION ORDER NO. 11.—CHANGE IN MEMBERSHIP OF PUBLIC SPACE COMMITTEE

[Text Omitted]

This order named a new person to the committee.

REORGANIZATION ORDER NO. 12.—CHANGE IN MEMBERSHIP OF WAGE BOARD

[Text Omitted]

This order named a new person to the committee.

REORGANIZATION ORDER NO. 13.—COMMITTEE ON MICROFILMING AND DISPOSAL OF OBSOLETE RECORDS, RELIEF OF MEMBER

[Text Omitted]

This order eliminated a member from the committee.

REORGANIZATION ORDER NO. 14.—BOND COMMITTEE, CHANGE IN MEMBERSHIP

[Text Omitted]

The order relieved a member and made a substitution.

REORGANIZATION ORDER NO. 15.—SECRETARY TO THE CONTRACT BOARD—SPECIAL ASSISTANT, DEPARTMENT OF GENERAL ADMINISTRATION

[Text Omitted]

The order concerned the appointments of the Secretary to the Contract Board, an assistant secretary to the Board, and an assistant special assistant in the Department of General Administration.

REORGANIZATION ORDER NO. 16.—DISTRICT OF COLUMBIA SAFETY COMMITTEE, CHANGE OF MEMBERSHIP AND APPOINTMENT OF CHAIRMAN

[Text Omitted]

This order relieved a member of the committee and named a new chairman.

REORGANIZATION ORDER NO. 17.—PARKING SPACE COMMITTEE

Reorg. Ord. No. 17, C. O. 302,853/14, C. O. 302,970/5, E. D. 248463-112, October 14, 1952, ordered:

That all previous Commissioners' Orders appointing Parking Space Committees are hereby cancelled, and the following order issued in lieu thereof:

That a Parking Space Committee is hereby appointed consisting of the three Administrative Assistants to the Commissioners, and the Superintendent of District Buildings; the function of said Committee being to allot spaces for the parking of official and private motor vehicles, and to prepare rules and regulations pertaining thereto.

The Chairman of this Committee shall be selected from among its own members.

REORGANIZATION ORDER NO. 18.—ADMINISTRATIVE SERVICES OFFICE

Reorg. Ord. No. 18, C. O. 302,070.D, C. O. 302,853/14, October 23, 1952, ordered:

PART I

a. There is hereby established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, an "Administrative Services Office", headed by an "Administrative Services Officer" who shall have full authority over such office and all personnel assigned thereto, including power of redelegation. The authority herein granted shall be exercised in accordance with applicable laws, rules and regulations.

b. The Administrative Services Office is established for the purpose of promoting maximum efficiency in the performance of various housekeeping functions common to nearly all departments, and shall perform such duties in conformance with policies of the Board of Commissioners thereon. Initially, such duties shall consist of those represented by the transfer of functions listed in Parts II and III hereof. The ultimate scope of such duties, however, shall be as follows:

(1) Perform, review, or make recommendations for furnishing all District printing, duplicating, binding, blueprinting, photostating, microfilming, and the selection of necessary equipment therefor.

(2) Maintain general files on all categories of records pertinent to the actions and considerations of the Board of Commissioners, the Department of General Administration and the general business of both with operating

departments and the public. Provide a Mail and Messenger Service which shall receive and dispatch all mail as assigned and install and operate such internal mail and messenger systems as may be authorized by the Commissioners after study.

(3) Review all space needs, except public space, and submit reports and recommendations for assignments to the Director of General Administration (and to the Board of Commissioners when appropriate) and execute control of approved assignments. Coordinate moving of office and other equipment in consequence of space assignments or reassignments by the Commissioners which shall include, among others, such matters as fixing the date of moving, and insuring public notice thereof where necessary. Departments and Offices having facilities for assisting in the performance of such moving shall, upon request of the Administrative Services Officer, contribute them to such purpose to the limit of their capabilities.

(4) Review and promote the most effective assignment of office equipment and establish its useful life for purpose of replacement.

(5) Review request for official travel by all District officers and employees as to form and authority, issue travel requests and instruct travelers and departments in the requirements of the travel regulations and Commissioners' travel policies.

(6) Maintain records of the assignment of all District-owned passenger carrying vehicles, except those assigned to the Police and Fire Departments, and continually study the utilization of them for the purpose of recommending reassignment or retirement.

(7) Maintain complete records of space allotted to District employees for parking privately owned motor vehicles on District or Federally owned property, review requests for and make recommendations for assignments and execute control of approved assignments.

(8) Develop and execute a complete program for property administration covering all real and personal property of the District Government, performing the work on a centralized basis for real property, but developing and supervising an effective decentralized program for personal property. This program shall include the acquisition of all real property, except condemnation proceedings and dedications of streets, alleys, etc.; outleasing and disposition of real property; demolition of abandoned or condemned structures on District Government land; sale or disposition of unserviceable, surplus or trade-in equipment and scrap material; acquisition and distribution of surplus property for educational, public health, civil defense and other purposes authorized by law; and inventory control procedures. Supplementing but excluded from jurisdiction of the program are the fiscal control accounts required in the chief accountant's office for purposes of effective internal controls. (Sub-paragraph 8 was amended by order #56-2478, dated Dec. 6, 1956.)

PART II

a. There are hereby transferred to the Administrative Services Office the following agency, division, sections, and functions, including the duties, powers and authorities of all officers and employees assigned thereto:

Division of Printing and Publications,
Mails Section, Superintendent of District Buildings,
Duplicating Section, Superintendent of District Buildings,
District of Columbia Educational Agency for Surplus Property,
Property Acquisition and Survey Section, Auditor's Office,
Assignment function of District passenger vehicles, Central Garage,
Records Section, Secretary's Office,
Records Section, Department of General Administration.

b. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions transferred are hereby transferred to the Administrative Services Office. Nothing herein shall be

construed as changing the status of the following accounts and fund:

Miscellaneous Trust Fund, Deposits, D. C., Operating Account-Printing,
Miscellaneous Trust Fund, Deposits, D. C., Operating Account-Blueprinting,
Working Capital Fund, Educational Agency for Surplus Property, D. C.

c. The division, agency, and sections listed in Paragraph a. of Part II are hereby abolished.

PART III

a. The following committees are hereby abolished in their present capacity and their duties, functions and records transferred to the Administrative Services Office which will function as the operating staff for performing the functions transferred. These committees are hereby reestablished with present membership as advisory committees to the Director of General Administration to advise and counsel him and the Board of Commissioners on matters within the subject area of their respective fields, especially on all major policy matters and significant or controversial operating problems.

Parking Space Committee,
Real Estate Committee,
Wharf Committee.

b. The Space Assignment Committee previously established by this Order on October 23, 1952, shall continue to function as an advisory committee to the Board of Commissioners and the Director of General Administration on all major policy matters and significant or controversial operating problems concerning the assignment of space in District-owned buildings provided, however, that said Committee shall be designated the Space Assignment Advisory Committee, and provided further that said Committee shall consist of not more than five members to be appointed by the Director of General Administration. (Sec. b, added by order dated Dec. 27, 1956, No. 56-2605. Phrase "Space Assignment Committee" was deleted from IIIa, by the same order.)

PART IV

There are hereby established in the Administrative Services Office so many divisions, sections, and positions with such titles and duties as the Director of General Administration and the Administrative Services Officer shall from time to time determine.

PART V

The Administrative Services Office shall continually study the activities of all departments as to the housekeeping functions described in Part I b and, as appropriate, submit through the Director of General Administration to the Board of Commissioners, recommendation as to District-wide policies that should be established and any additional transfers of housekeeping functions which should be made to the Administrative Services Office.

PART VI

This order shall become effective on and after November 9, 1952.

REORGANIZATION ORDER NO. 19.—INTERNAL AUDIT OFFICE

Reorg. Ord. No. 19, C. O. 302,970.D, C. O. 302,853/14, November 10, 1952, ordered that:

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, an Internal Audit Office headed by an Internal Audit Officer. The Internal Audit Officer shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials of the Internal Audit Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Internal Audit Office is established for the purpose of developing and maintaining a system for the continuous or periodic examinations of the accounts and financial practices of the District of Columbia Government to the end that the Board of Commissioners, the Director of General Administration, and the various Department and Office Heads will be informed as to the currency, accuracy, and integrity of financial accounts and records in conformance with policies of the Board of Commissioners.

PART III

Organization.—There shall be established in the Internal Audit Office so many organizational components, and positions with such duties and titles as the Internal Audit Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The responsibilities of the Internal Audit Office shall be to:

(1) Verify transactions and balances pertaining to income, expenditures and transfer of all appropriated funds, special limitations imposed by Congress, special and trust funds, and allotments to the extent necessary to ascertain compliance with established laws, regulations, policies and procedures.

(2) Prepare periodic reports relative to the conditions of the accounting systems, the propriety of operations and transactions, and any defalcations or other failures to account for funds.

(3) Make specific recommendations for correcting deficiencies in the accounting systems, as these are revealed by either the continuous or the periodic audits.

(4) Review and appraise existing accounting policies and procedures in terms of their adequacy and effectiveness in controlling income, expenditures, funds, property and other assets including costs, and in disclosing financial information to management at various levels.

(5) Serve in an advisory capacity in matters pertaining to internal accounting and control.

(6) Pursuant to the provisions of Public Law 561, 85th Congress, 2d Session, approved July 28, 1958, serves as the designated agent of the Board of Commissioners in certifying as to the accuracy of the financial statement required of the Armory Board by Section 10 of the District of Columbia Stadium Act of 1957. (Par. 6 added by order No. 1381A, Aug. 28, 1958.)

PART V

a. The following positions under the responsibility of the existing Auditor are transferred to the Internal Audit Office. The duties, powers and authorities of all officers and employees assigned thereto shall continue insofar as they relate to the functions enumerated herein.

First Deputy Auditor, GS-14, No. 7-1-2

1 Secretary, GS-4, No. 7-1-5

1 Assistant Chief of the Auditing Division, GS-11, No. 7-4-2

1 Chief Field Examiner, GS-10, No. 7-4-4

1 Assistant Chief Field Examiner, GS-8, No. 7-4-5

8 Field Examiner & Gas Tax Inspector, GS-7, No. 7-4-7, 7-4-9, and 7-4-11 to 7-4-16

5 Assistant Field Auditors, GS-5, No. 7-4-18, 7-4-19, and 7-4-21 to 7-4-23

b. All personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed in this Part are hereby transferred to the Internal Audit Office.

PART VI

This order shall become effective on and after November 10, 1952.

REORGANIZATION ORDER NO. 20.—FINANCE OFFICE

(Superseded by Organization Order No. 121)

Reorg. Ord. No. 20, C. O. 302,970.E, C. O. 302,853/14, November 10, 1952, as amended October 5, 1954, ordered

that [see also Reorg. Order No. 20 amendment and Reorg. Order No. 25]:

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, a Finance Office headed by a Finance Officer (who also shall be the Assessor). The Finance Officer shall have full authority over such Office and all personnel assigned thereto, including the power to re-delegate to other officials of the Finance Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Finance Office is established for the purpose of administering laws governing tax, fee and other types of assessments, designing, installing and maintaining accounting systems and procedures in the District Government, collecting revenues and depositing them in appropriate depositories, and pre-auditing of, certifying to, and properly disbursing D. C. funds.

PART III

Organization.—a. The Finance Office shall be composed as follows: Office of the Assessor headed by an Assessor (who also shall be the Finance Officer), Office of the Collector of Taxes headed by a Collector of Taxes, Disbursing Office headed by a Disbursing Officer, and Accounting Office headed by an Accounting Officer.

b. The following Boards are established under the Assessor:

(1) The Board of Assistant Assessors (Real Estate), composed of the Assessor (ex-officio member and chairman) and all Assistant Assessors with the exception of three who shall be known as the Board of Personal Tax Appraisers, who shall assess all real property, taxable and exempt, in the District of Columbia, as required by law.

(2) The Board of Personal Tax Appraisers, composed of the Assessor (ex-officio member and Chairman) and three Assistant Assessors, who shall assess all taxable tangible personal property including motor vehicles, motor vehicle and trailer excise taxes, gross earnings of banks and building associations, gross receipts of public utility and title companies, and fees to be paid by foreign building associations and note brokers.

(3) The Board of Equalization and Review, composed of the Assessor (ex-officio member and Chairman), Deputy Assessor and all Assistant Assessors, who shall equalize real estate assessments and shall hear and act upon complaints against real estate assessments, as required by law. Any three of said Board of Equalization and Review shall constitute a quorum for business. (Last sentence was added by order No. 56, 920, dated May 9, 1956.)

c. There shall be established in the Finance Office such additional organizational components and positions, with such duties and titles as the Finance Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Finance Office include, but are not limited to the following:

a. *Office of the Assessor.*—(1) The Office of the Assessor is responsible for the administration and execution of the laws relating to various taxes, licenses, fees, rents and special assessments. Such functions shall include the levying of assessments, the rendition of bills, the maintenance of individual ledger accounts reflecting amounts due, payments and unpaid balances, the maintenance of control accounts, the recording of erroneous payments and over-payments, the preparation of refund vouchers, and other related or incidental duties or procedures as may be required by law or which may be necessary for proper administration.

(2) The function of approving the levying of special assessments for curb and gutter, sidewalks and alleys, previously performed by the Board of Commissioners, is hereby delegated to the Assessor.

(3) Upon written notification from the Director of Licenses and Inspections or the Director of Public Health that a nuisance has been abated or an illegal condition has been corrected, including a statement of the exact cost of such abatement or correction, levies the proper assessment, as provided by law. (Added by order No. 56-210, dated Jan. 31, 1956.)

b. *Office of the Collector of Taxes.*—(1) The Office of the Collector of Taxes is responsible for the collections of revenues of the Government of the District of Columbia, including the processing, accounting, and distribution of all payments and receipts into respective revenue accounts, and daily depositing of all funds so collected and received with the Treasurer of the United States. The Collector is held responsible, under bond in amount of \$100,000, for collection of all taxes, except such taxes as he may not be able to collect after duly complying with requirements of existing law.

(2) Responsibility for the custody of trust fund securities heretofore delegated to the Accounting Officer (formerly Auditor) and the Secretary to the Board of Commissioners pursuant to the action by the Board of Commissioners on March 18, 1942, is hereby transferred to the Collector of Taxes.

c. *Disbursing Office.*—(1) The Disbursing Office is responsible for performing the functions of disbursement of monies of the District of Columbia.

(2) Disburse monies in cash or by checks drawn on the Treasurer of the United States, only upon, and in strict accordance with, vouchers and payrolls duly certified by the Accounting Officer, D. C., or by an employee of his office authorized in writing to certify such vouchers and payrolls.

(3) Make such examination of vouchers and payrolls as may be necessary to determine they are in proper form, duly certified, and be held accountable accordingly.

(4) The Disbursing Officer is hereby authorized, under bond in amount of \$50,000, to discharge the duties of his office according to existing laws and such rules and regulations that are prescribed in conformity to law.

d. *Accounting Office.*—(1) The Accounting Office is responsible for creating, installing and technically supervising accounting systems in the District Government, developing and directing the operation of all cost accounting systems, directing and assisting in the technical training of personnel engaged in accounting work, pre-auditing and certifying the correctness and propriety of obligations and expenditures, preparing and certifying payrolls of employees, maintaining records and reports pertinent to retirement accounting, and developing, compiling and preparing accounting information and reports for the purpose of revealing the financial status and condition of the District Government or any of its parts.

(2) The Accounting Officer shall be bonded in the amount of \$20,000 as Accounting Officer and Certifying Officer.

PART V

a. There are transferred to the Finance Office all functions of the following named offices and boards, including the functions of all officers, employees, and subordinate agencies of each:

Office of the Assessor
Disbursing Office
Board of Assistant Assessors
Board of Equalization and Review

b. The functions of the Office of the Collector of Taxes, except those functions relating to the sale of dog licenses which are hereby transferred to the Superintendent of Licenses, are transferred to the Finance Office. The functions of all officers, employees and subordinate agencies assigned thereto shall continue.

c. The functions of the following divisions, section and positions under the responsibility of the existing Auditor, including the functions of all officers, employees, and subordinate agencies of each, are transferred to the Finance Office.

Accounting Division
Retirement and Payroll Division
Voucher Pre-Audit Section, Auditing Division

1 Secretary, GS-6, 7-1-4

1 Mail & Files Control Clerk, GS-3, 7-1-6

d. All personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred in a, b, and c, above are hereby transferred to the Finance Office.

e. The position of Clerk, GS-2, No. 6-1-11, including the person, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and position transferred, are hereby transferred to the License Bureau.

f. The following named offices, including the offices of the heads thereof, are abolished:

Office of the Assessor
Disbursing Office
Office of the Collector of Taxes
Office of the Auditor

g. The following named Boards, including the offices of the heads thereof, are abolished:

Board of Assistant Assessors
Board of Equalization and Review

PART VI

a. Pursuant to the provisions of Public Law No. 744, 75th Congress, approved June 25, 1938, entitled "An Act Relating to the Levying and Collecting of Taxes and Assessments, and for Other Purposes", an Assistant Corporation Counsel designated by the Corporation Counsel, the Assessor and the Collector of Taxes, shall constitute a committee, to be known as the Committee on Special Assessment Appeals, to act as agents of the Commissioners with the powers and duties which may be performed by the agents designated by the Commissioners under said Act. The Assistant Corporation Counsel shall be Chairman of this Committee. The Committee shall also consider petitions filed pursuant to Section 7 of said Act, and shall submit its recommendations to the Commissioners.

b. The previously existing Committee on Special Assessment Appeals, including the office of the head thereof is abolished.

PART VII

This order shall become effective on and after November 10, 1952, except that the abolishment of the office of the head of the existing Office of the Assessor and the establishment of the position of Finance Officer (who also shall be the Assessor) shall become effective on and after November 12, 1952.

REORGANIZATION ORDER NO. 20.—FINANCE OFFICE [AMENDMENT]

(Superseded by Organization Order No. 121)

Reorg. Ord. No. 20, C. O. 302,970.E, C. O. 302,853/14, C. O. 298,879/31, March 19, 1953, amending Reorg. Ord. No. 20, dated November 10, 1952, ordered:

That the Collector of Taxes, D. C., is hereby authorized and directed to sell at private sale, all goods and chattels seized for non-payment of District taxes, when the highest bid offered therefor at public auction is not sufficient to meet the amount of taxes, penalties, and costs due thereon; and the Collector of Taxes is hereby further authorized to defray the cost of advertising, handling, auctioneer's fee, and other expenses incidental to the holding of such sale, from the proceeds therefrom, in accordance with authority vested in the Commissioners, under Title 47, sec. 1302, of the District of Columbia Code.

REORGANIZATION ORDER NO. 21.—PERSONNEL OFFICE

Reorg. Ord. No. 21 C. O. 302,970.C, C. O. 302,853/14, November 20, 1952, ordered that

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, a Personnel Office headed by a Personnel Officer. The Personnel Officer shall have full authority over such

Office and all functions and personnel assigned thereto, including the power to redelegate to other officials of the Personnel Office such of the powers herein delegated as, in his judgment, are warranted in the interests of efficiency and good administration. For the same reasons, the Director of General Administration may redelegate in whole or in part to Heads of Departments and offices the functions including the duties, powers, and authorities set forth in Part IV, Sections (1), (2) and (6) hereof. These authorities shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Personnel Office is established for the purpose of assisting in the promotion of outstanding public service by the District Government, the achievement of efficiency and economy, and the development of high employee competence and enthusiasm. The office shall seek to fulfill its purpose through forward-looking, equitable personnel policies; practical, up-to-date procedures and efficiently conducted personnel activities. This office shall work with the departments to develop personnel policies and programs for consideration by the Board of Commissioners. It shall give staff advice and assistance to the Board of Commissioners and to the departments on personnel matters. In addition, it shall itself perform certain centralized personnel activities.

PART III

Organization.—There shall be established in the Personnel Office as many organizational components and positions with such duties and titles as the Personnel Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Scope and functions.—The scope of the Personnel Office will encompass all categories of positions, employees, and officers in or under the District of Columbia Government with respect to those personnel functions heretofore and hereafter vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5. (As amended by order dated Oct. 26, 1954.)

(1) *Classification and pay administration.*—a. Develop and administer a position classification program to assure that the principle of equal pay for substantially equal work is followed, and that individual positions are so grouped and identified that the resulting system can be used in all phases of personnel administration. The Personnel Officer, through the Director of General Administration, is delegated authority to classify finally each position up to and including GS-15 and CPC-10, subject to appeal to the Board of Commissioners or the Civil Service Commission.

b. Identify and evaluate all wage board positions and furnish information to the D. C. Wage Scale Board regarding appropriate rate schedules on the basis of surveys or other administrative determinations.

(2) *Employment and placement.*—a. Plan, develop, and administer an employment and placement program to obtain, under open competitive opportunities, the best available qualified employees, and to maintain fair and effective promotion policies and procedures. The Personnel Officer, through the Director of General Administration, is delegated authority to approve, on recommendation by the appropriate department or office heads appointments to all classified positions up to and including grade GS-13 and CPC-10; to all wage board positions; to uniformed positions in the police and fire departments up to and including the rank of lieutenant, and such other position categories as the Board of Commissioners may determine. Such authority is delegated for the purpose of insuring compliance with established job qualification standards and Commissioners' policies, and to assist department and office heads in the selection process. He shall have advisory responsibility to the Board of Commissioners on all appointments to positions above grade GS-13 and above the rank of lieutenant in the Police and Fire Departments.

b. Plan, develop and, when approved by the Board of Commissioners, administer a program for the separation

of employees consistent with the needs and best interest of the organization, with governing legal and regulatory requirements, and with sound personnel policies. This program shall include reduction-in-force, resignation, retirement and other types of separations.

(3) *Employee training.*—Plan and coordinate employee training programs and provide assistance to supervisors at all levels in exercising their fundamental responsibility for training subordinate employees. Such assistance will be given in connection with determination of training needs, development of training program content and schedules, provision of competent instruction, and evaluation of results.

(4) *Employee relations.*—Develop and administer an employee relations program to safeguard the rights of the employee, to inform him of things which affect him, to assure him that his well being is a matter of concern and to help bring about a realization on the part of management of its obligations in this respect. Included under this function are: the development of a system of employee participation on personnel matters; the improvement of working conditions; the provision for counseling services for employees; the adjustment of grievances; the handling of disciplinary matters; and the planning and administration of a program for special incentives.

(5) *Performance evaluation.*—Plan and administer a program for evaluating employee performance.

(6) *Records and reports.*—Process personnel actions, maintain official personnel records and files (except payroll, leave and retirement records) and prepare periodic and special reports, or provide for the performance of such functions by other organizations.

(7) *Advisory duties.*—Serve in an advisory capacity on all personnel matters to the Board of Commissioners, the Director of General Administration and the various departments and offices of the D. C. Government.

PART V

There is hereby established a District of Columbia Wage Scale Board, consisting of the Personnel Officer as Chairman and not to exceed nine other members to be appointed by the Director of General Administration. The function of such Board shall be to advise the Board of Commissioners, through the Director of General Administration, as to the wage rates that should be paid those employees authorized by law to be employed under wage board procedures. (As amended by order dated Apr. 7, 1955.)

PART VI

The Personnel Officer is authorized to establish, with the approval of the Director of General Administration, such other advisory committees and boards as deemed necessary.

PART VII

(1) There are hereby transferred to the Personnel Office the functions, including the duties, powers and authorities of all officers and employees assigned thereto, of the following:

- District Personnel Board
- Wage Scale Board
- Safety Section, Dept. of General Administration
- Agency Committee on Deferment of D. C. Government Employees
- Loyalty Committee
- Civil Service Liaison Section, Secretary's Office
- Employee's Compensation Sub-Section, Investigation Section, Office of Corporation Counsel

(2) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Personnel Office.

(3) The Sections, Sub-Section, Boards and Committees listed in this part, including the office of the head of the District Personnel Board, are abolished.

This order shall become effective on and after November 23, 1952.

REORGANIZATION ORDER NO. 22.—BOARD OF REVOCATION AND REVIEW OF HACKERS' IDENTIFICATION LICENSES—ADDITIONAL MEMBERS

Reorg. Ord. No. 22, C. O. 297,824, C. O. 302,853/14, December 2, 1952, ordered:

That the following-named Special Assistants to the Commissioners are hereby appointed additional members of the Board of Revocation and Review of Hackers' Identification Licenses:

Lawrence E. Duvall
George A. England
G. Adolph Turner

That one of the above-named Special Assistants to the Commissioners shall sit as a member of said Board at each and every meeting held by the Board.

That there is hereby delegated to the said Board the power and authority now vested in the Commissioners to suspend and revoke licenses issued under sub-paragraph (e) of paragraph 31 of Section 7 of an Act entitled "An Act making appropriations to provide for the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes", approved July 1, 1902, as amended by the Act of Congress approved July 1, 1932, provided the action of the said Board is unanimous, but if the action of said Board suspending or revoking any such license is not unanimous the action of said Board shall not be final and the entire file, including a transcript of the testimony and proceedings before said Board, shall be forwarded to the Commissioners for their action thereon without further hearing, unless the Commissioners shall otherwise direct.

That in the event an application for any license required by said sub-paragraph is denied by the Director of Vehicles & Traffic, the applicant shall have a right of appeal to the said Board, and in the event of such appeal, the power and authority to grant such license is hereby vested in said Board, and also, in the event of such appeal, the power and authority to deny such license is hereby vested in said Board, provided the action of the Board is unanimous, but if the action of the Board denying such license is not unanimous, the action of said Board denying such license shall not be final and the entire file, including a transcript of the testimony and proceedings before said Board, shall be forwarded to the Commissioners for their action thereon without further hearing unless the Commissioners shall otherwise direct.

REORGANIZATION ORDER NO. 23.—DEPOSITS OF SECURITIES BY INSURANCE COMPANIES

Reorg. Ord. No. 23, C. O. 273,696, C. O. 302,853/14, December 30, 1952, ordered:

That the Internal Audit Officer or his first deputy and the Disbursing Officer or his first deputy are hereby designated, in lieu of the Secretary to the Board of Commissioners of the District of Columbia and the Auditor of the District of Columbia, to perform certain functions in connection with deposits of securities made by insurance companies pursuant to Sections 35-415, 35-416, and 35-417, D. C. Code, 1951 Edition.

REORGANIZATION ORDER NO. 24.—BUDGET OFFICE

Reorg. Ord. No. 24, C. O. 302,853/14, C. O. 302,970.F, C. O. 300,857, December 30, 1952, ordered that:

PART I

There is established in the Department of General Administration, under the direction and control of the Director of General Administration, a Budget Office headed by a Budget Officer. The Budget Officer shall have full authority over such office and all personnel assigned thereto, including the power to re-delegate to other officials of the Budget Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Budget Office is established for the purpose of assisting and advising the Board of Commission-

ers and the Heads of the Departments and Offices in the development and implementation of improved budgetary policies, practices, and procedures; administering central internal budgetary coordination and control for the D. C. Government; analyzing budget requests and recommending specific budget estimates which adequately meet program and performance requirements; preparing the budget for the District Government as approved by the Board of Commissioners and assisting and participating in the presentation of budget estimates and justifications before the Bureau of the Budget and Appropriations Committees of the Congress.

PART III

Organization.—There shall be established in the Budget Office as many organizational components and positions with such duties and titles as the Budget Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Budget Office are to:

(a) Develop and prepare, for consideration by the Board of Commissioners, policies, procedures, and practices governing the preparation and administration of the budget in the D. C. Government.

(b) Advise and assist the Departments and Offices in the preparation of budget estimates and supporting data.

(c) Analyze budget estimates prepared by the Departments and Offices to insure that they properly reflect the financial requirements of the D. C. Government, and to assist in the presentation of such estimates before the Board of Commissioners.

(d) Advise and assist the Board of Commissioners in determining all D. C. Government budget estimates.

(e) Prepare the budget estimates for the District Government as approved by the Board of Commissioners.

(f) Arrange for and participate in the presentation of budget estimates at hearings before the Congressional appropriations committees.

(g) Serve as liaison between the D. C. Government and the Bureau of the Budget and the appropriations committees on budgetary matters.

(h) Maintain budgetary controls over funds appropriated to the D. C. Government, including the making of apportionments of appropriations or changes therein, and the establishment of budgetary and administrative reserves. The actions of the Budget Officer in making apportionments of appropriations or changes therein will be reviewed by the Director of General Administration upon the request of a department head and will be further reviewed by the Board of Commissioners when requested in writing by a department head.

(i) Prescribe systems of records and reports for budget purposes.

(j) Receive and compile the annual, supplemental and deficiency budget estimates for the District of Columbia.

(k) Advise as to anticipated D. C. revenues and the availability of such revenues for general, special, and trust fund purposes.

(l) Advise as to proposed legislation involving revenues and expenditures, by cooperation with the Corporation Counsel and other interested officials.

(m) Prepare budgetary reports as required by the Board of Commissioners, the Budget Bureau and the Congress; prepare such other budgetary reports as may be required for internal administrative use.

(n) Prepare the Annual Report of the D. C. Government.

PART V

(a) There are transferred to the Budget Office all functions, including the functions of all officers and employees, of the existing Budget Office.

(b) All positions, personnel, property, records and unexpended balance of appropriations, allocations, and other funds available or to be made available, relating to the functions and positions transferred, are hereby transferred to the Budget Office.

(c) The existing Budget Office, including the office of the head thereof, is abolished.

PART VI

This order shall become effective on and after December 31, 1952.

REORGANIZATION ORDER NO. 25.—TRANSFER OF FUNCTIONS OF AUDITOR TO FINANCE OFFICE

Reorg. Ord. No. 25, C. O. 302,853/14, C. O. 302,970.E, December 30, 1952, amending Reorg. Ord. No. 20, ordered:

That Section c, Part V of Reorganization Order Number 20 is hereby amended, retroactive to November 10, 1952, as follows: (*Italics indicate amendments.*)

PART V

c. The functions of the following divisions, section and positions under the responsibility of the existing Auditor, including the functions of all officers, employees, and subordinate agencies of each, are transferred to the Finance Office, *together with all functions of the Auditor under Public Law 84, 82d Congress (approved July 30, 1951), relating to certifying officers and employees:*

- Accounting Division
- Retirement & Payroll Division
- Voucher Pre-Audit Section, Auditing Division
- Second Deputy Auditor, GS-13, 7-1-3
- 1 Secretary, GS-6, 7-1-4
- 1 Mail and Files Control Clerk, GS-3, 7-1-6.

REORGANIZATION ORDER NO. 26.—TRANSFER OF FUNDS TO THE DEPARTMENT OF GENERAL ADMINISTRATION

[TEXT OMITTED]

The order transferred specified amounts to the Department of General Administration [see also Reorg. Order No. 26 amendment].

REORGANIZATION ORDER NO. 26.—TRANSFER OF FUNDS TO DEPARTMENT OF GENERAL ADMINISTRATION [AMENDMENT]

[TEXT OMITTED]

This order amended the first paragraph of Order No. 26.

REORGANIZATION ORDER NO. 27.—OFFICE OF SURVEYOR

Reorg. Ord. No. 27, C. O. 302,853/14, C. O. 302,970.G, April 3, 1953, as amended April 10, 1953 and July 27, 1954, ordered that:

PART I

Office of the Surveyor.—There is established under the direction and control of the Engineer Commissioner, an Office of the Surveyor headed by a Surveyor. The Surveyor shall have full authority over such office and all personnel assigned thereto, including the power to redelegate to other officials of the Office of the Surveyor such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. However, the power to authorize the approval for record of all plats and subdivisions in the official records of the District of Columbia, as agent for the Board of Commissioners, shall be limited to the Surveyor or, in his absence, the Acting Surveyor. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Office of the Surveyor is established to provide a legal office of record for such plats and subdivisions of public and private property in the District of Columbia as may be authorized or required by law or regulations, and to perform such other functions as may from time to time be assigned to it.

PART III

Organization.—There shall be established in the Office of the Surveyor so many organizational components, and positions with such duties and titles as the Surveyor, with the approval of the Engineer Commissioner, shall from time to time determine.

PART IV

Functions.—The functions of the Office of the Surveyor shall be to:

1. Prepare the necessary data and plats for all subdivisions of property.

2. Prepare plats of streets, roads, and alleys acquired by dedication, condemnation, or purchase; closings of streets and alleys; transfers of jurisdiction between government agencies; and changes in the Plan of the Permanent System of Highways of the District of Columbia.

3. Prepare plats for private persons based upon property surveys, condemnation action, or existing office records.

4. Make field surveys for private persons, District Government departments and offices, and Federal departments and agencies.

5. Make computations to be used as the basis for determination of areas and dimensions of lots, squares, and tracts of unsubdivided land; make computations to determine location of dedicated and condemned streets.

6. Determine fees for work performed on basis of fee schedules promulgated by the Board of Commissioners, except that the Surveyor shall execute surveying work for the District of Columbia without charge, upon the written request of the department or agency concerned.

7. Maintain official record files; maintain appropriate records of work performed and fees collected.

8. Initiate and develop policies, for consideration by the Board of Commissioners, concerning the relationship between the Office of the Surveyor and the general public, Federal departments and agencies, and District Government departments and offices.

9. Furnish information and advice to the Board of Commissioners, District Government departments and offices, Federal departments and agencies, and the general public, on matters pertaining to field surveys, subdivision of property, and related functions of the Office of the Surveyor.

10. Approve for record all plats and subdivisions in the official records of the District of Columbia.

PART V

The making of abstracts of wills, deeds, and court orders for use in the preparation of assessment and taxation plats, and preparation of assessment and taxation plats shall continue to be delegated to the Office of the Assessor until such time as a determination to the contrary may be made by the Board of Commissioners.

PART VI

Transfer of positions.—a. All positions in or under the existing Office of the Surveyor, including the duties, powers and authorities of all officers and employees assigned thereto, are transferred to the new Office of the Surveyor, except the following positions which are hereby abolished:

Surveying and Cartographic Engineer, GS-7, No. 11-15-27

Surveying and Cartographic Aid, GS-2, No. 11-15-19

Surveying and Cartographic Aid, GS-2, No. 11-15-38

Surveying and Cartographic Aid, GS-1, No. 11-15-40

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in A of this Part, are transferred to the Office of the Surveyor.

c. The existing Office of the Surveyor, including the office of the head thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This order shall become effective on and after April 12, 1953.

REORGANIZATION ORDER NO. 28.—DEPARTMENT OF SANITARY ENGINEERING

Reorg. Ord. No. 28, C. O. 302,970.H, C. O. 302,853/14, April 3, 1953, as amended August 4, 1953, ordered that:

PART I

Department of Sanitary Engineering.—There is hereby established, under the direction and control of the En-

gineer Commissioner, a Department of Sanitary Engineering, headed by a Director. The Director shall have full authority over such Department, including:

1. The power to re-delegate to other officials of the Department such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration.

2. Expenditure of appropriated and other funds, regardless of their source, which are provided for carrying out the functions of the Department of Sanitary Engineering and its constituent units.

3. Supervision and control over equipment and property, both personal and real.

These authorities shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Sanitary Engineering is established for the purpose of assuring the provision, operation and maintenance of sanitary facilities which will serve to maintain and increase the well-being of the community and its people. Specifically, the Department of Sanitary Engineering shall perform sanitary engineering services and operations for the District of Columbia as outlined herein, including responsibility for:

1. Design, construction, maintenance, and operation of the water distribution and sanitary, storm, and combined sewer systems and the appurtenances thereto.

2. Design, construction, maintenance, and operation of the sewage treatment facilities.

3. Collection and disposal of waste material, including snow removal.

4. Determination of cost of services provided and recommending to the Board of Commissioners appropriate changes in rate schedules.

5. Computation of charges for services performed, and billing for payment.

PART III

Organization.—There are hereby established in the Department of Sanitary Engineering the following organizational components:

1. Office of the Director.
2. Office of Planning, Design, and Engineering.
3. Sanitation Division.
4. Water Operations Division.
5. Sewer Operations Division.
6. Construction and Repair Division.
7. Equipment Division.
8. Office of Business Administration.

PART IV

Functions.—a. *Office of the Director, Department of Sanitary Engineering:*

1. Develops and proposes major policies on sanitary engineering matters to the Board of Commissioners.

2. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all of the sanitary engineering programs, services, and operations of the District of Columbia, including the capital improvements program for the Department.

3. Advises and assists the Engineer Commissioner on all District of Columbia matters relating to sanitary engineering

4. Develops, presents, and justifies departmental budget estimates.

5. Represents the Engineer Commissioner in coordinating the sanitary engineering services and facilities of the District of Columbia with those of other communities in the Washington Metropolitan area, and with the Federal Government.

b. *Office of Planning, Design, and Engineering.*

1. Initiates and plans, in collaboration with the Department of Buildings and Grounds, and consultants as necessary, capital improvements in sanitary engineering facilities of the District of Columbia.

2. Initiates, plans and recommends programs for the extension of the water distribution and sanitary, combined and storm sewer systems; sewage treatment facilities; and other plant facilities necessary to assure

adequate sanitary engineering services and facilities to provide for the social and economic well-being of the community.

3. Prepares all designs, drawings and specifications for the construction, extension, maintenance, modification and repair of sanitary engineering facilities.

4. Performs preliminary field surveys in connection with office studies and design of facilities.

5. Makes studies, estimates, and plats for extension and replacement of water distribution and sanitary, combined and storm sewer systems.

6. Prepares proposed construction contracts, reviews bids, and recommends awards.

7. Prepares and keeps current system maps and other records showing construction and repair details and other useful physical information relating to the facilities of the Department of Sanitary Engineering.

8. Compiles data for use in connection with special assessments.

9. Cooperates with Construction and Repair Division by providing, as required, design data and advice, and consultant and special inspection services for contract or force account construction and repair work.

10. Informs the public, other District and Federal Agencies, Utility Companies, etc., regarding available sewer and water services and the terms, conditions and costs under which the facilities of the Department may be used, extended, modified or abandoned.

11. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance evaluation, productivity, accounting, and budgetary control purposes.

c. *Sanitation Division.*

1. Plans, controls, and is responsible for all waste and dead animal collection and disposal operations.

2. Cleans all streets and alleys, and disposes of all debris and sweepings.

3. Supervises the contract work of collection and disposal of night soil.

4. Cleans stormwater receiving basins of the sewage system.

5. Conducts mosquito control program where catch basin spraying is required and administers fly control program.

6. Plans and supervises program for snow removal and ice control.

7. Maintains and operates disposal facilities consisting of incinerators, refuse transfer stations, and landfills.

8. Collaborates with the Department of Buildings and Grounds and the Office of Planning, Design, and Engineering in connection with the design and construction of refuse disposal facilities.

9. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting, and budgetary control purposes.

10. Upon written notification from the Director of Licenses and Inspections or the Director of Public Health that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, causes said nuisance to be abated or said condition to be corrected in whatever manner considered to be in the best interest of the District Government.

11. Notifies, in writing, the Director of Licenses and Inspections or the Director of Public Health, as appropriate, of each abatement of nuisance or correction of illegal condition case completed, furnishing a statement of the exact cost of the abatement or the correction and a request for reimbursement.

12. The authority vested herein to take action to abate a nuisance or to correct an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Sanitary Engineering.

(Subparts 10, 11 and 12 added by Order No. 56-211, dated Jan. 31, 1956.)

d. Water Operations Division.

1. Plans programs and policies, and is responsible for, the operation, maintenance, and repair of the water pumping stations and all equipment located therein, reservoirs, tanks and other components of the water distribution system.

2. Coordinates the pumping activities of the water system with the water supply system operated by the U. S. Corps of Engineers.

3. Controls and operates all elements of the distribution piping system, reservoirs, and tanks.

4. Maintains, and makes minor repairs to the water-mains, and appurtenances thereto.

5. Installs, maintains, and repairs water meters, including turn-on and turn-off.

6. Operates shops and yards in the fabrication, repair, maintenance, storage, issue and transportation of components used in the construction, operation, maintenance, and repair of the water distribution system.

7. Collaborates with the Construction and Repair Division in the latter's performance of major repairs to the water distribution facilities.

8. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation productivity, accounting, and budgetary control purposes.

9. Collaborates with the Office of Planning, Design, and Engineering and the Department of Buildings and Grounds in connection with the design and construction of water distribution facilities.

e. Sewer Operations Division.

1. Plans programs and policies, and is responsible for the operation, maintenance, and making of minor repairs to the sewer facilities of the District of Columbia, including the treatment of all sewage and liquid waste delivered to the Sewage Treatment Plant from the sewer system.

2. Plans schedules for, operates, maintains, and makes repairs to the pumping equipment, and the appurtenances thereto, of the sewer system.

3. Maintains and makes minor repairs to the sewer-mains which comprise the storm, sanitary, and combined sewage systems. Maintains stream beds and conducts mosquito control operations in open areas where required.

4. Operates shops and yards in the fabrication, repair, maintenance, storage, issue and transportation of components used in the construction, operation, maintenance, and repair of all sewers, pumping, and treatment facilities.

5. Collaborates with the Construction and Repairs Division in the latter's performance of major repairs to the sewer and treatment facilities.

6. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting, and budgetary control purposes.

7. Collaborates with the Office of Planning, Design, and Engineering and the Department of Buildings and Grounds in connection with the design and construction of sewage facilities.

f. Construction and Repair Division.

1. Constructs and makes major repairs by contract or with force account labor to the water mains, sanitary, storm, and combined sewers, structures, plants, and appurtenances thereto comprising the water distribution, sewer, and disposal systems.

2. Supervises and inspects contract and force account construction, as required, of facilities of the Department.

3. Provides lines and grades for construction, and furnishes data on all construction for posting on maps and records.

4. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance

evaluation, productivity, accounting, and budgetary control purposes.

g. Equipment Division.

1. Plans, develops, and administers programs, policies, procedures, and standards for the maintenance and repair of all automotive and construction equipment of the Department.

2. Makes heavier repairs (third and higher echelons) on automotive and construction equipment used by all Divisions of the Department.

3. Reviews and makes appropriate recommendations to the Director of the Department with respect to procurement of vehicles and parts for use by the Department.

4. Plans and initiates necessary measures to secure standardization of automotive and motorized construction equipment, parts, stores, and related supplies to greatest extent possible consistent with objectives of economical and efficient operation.

5. Requisitions, receives, stores, issues, and accounts for all equipment, parts, stores, and related supplies used by the Equipment Division.

6. Collaborates with the Chief of the Office of Business Administration and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting, and budgetary control purposes.

h. Office of Business Administration.

1. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, administrative services, personnel, and management improvement activities.

2. Prepares, for the Director, programs and plans of operation including budget requests and justifications, and periodic and annual reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the offices of the Department of Sanitary Engineering in administrative programs.

4. Plans, develops, and installs standard Department-wide reporting systems which will furnish detailed data on employee performance, personnel requirements, department operations, and activity costs.

5. Administers the meter reading and billing activities, including the issuance of connection permits and selling of fixtures, the estimation of water consumption revenues, analyses of rates to be charged for services rendered, and the handling of complaints.

6. Makes special studies for the Director of matters involving fiscal relationships within the Department or with other agencies.

PART V

Transfer of positions.—(a) There are hereby transferred to the Department of Sanitary Engineering all offices and personnel of the existing Department of Sanitary Engineering and the Office of the Water Registrar.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the Department of Sanitary Engineering.

c. Coincident with the establishment of the Department of Sanitary Engineering described hereinabove, the existing Department of Sanitary Engineering which includes the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant, and their organizational components and the Office of the Water Registrar, and the offices of the heads of such Department, Office and Divisions are hereby abolished.

PART VI

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this order are, to the extent of such conflict hereby repealed.

PART VII

Effective date.—This order shall become effective on and after May 24, 1953.

REORGANIZATION ORDER NO. 29.—PROCUREMENT OFFICE

Reorg. Ord. No. 29, C. O. 302,970 I. & C. O. 302,853/14, April 14, 1953, as amended June 4, 1953, September 17, 1953, February 2, 1954, June 1, 1954, and October 30, 1956, ordered that:

PART I

Procurement office.—(a) There is established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, a Procurement Office headed by a Procurement Officer. The Procurement Officer shall have full authority over such Office and all personnel assigned thereto, including the power to re-delegate to other officials of the Procurement Office such of the powers delegated in Part IV herein, as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

(b) The Deputy Procurement Officer and the Assistant Deputy Procurement Officer are authorized to exercise all the powers vested in the Procurement Officer, during the disability or other absence from duty of said Officer, and also from the date of separation of said Officer from the services of the District of Columbia Government and until the successor to said Officer is appointed, but said Assistant Deputy Procurement Officer shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Procurement Officer.

PART II

Purpose.—The Procurement Office is established for the purpose of obtaining the maximum advantages of centralized purchasing and for developing, installing, and supervising effective and simplified purchasing policies and procedures for departments and offices of the District of Columbia Government.

PART III

Organization.—There shall be established in the Procurement Office so many organizational components and positions with such duties and titles as the Procurement Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Scope and functions.—(a) The Procurement Officer will perform those purchasing functions heretofore vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 with respect to all departments and offices in or under the District of Columbia Government. Contracting Officers appointed by the Board of Commissioners as provided for in Part VI herein, shall perform the functions herein or hereafter assigned to them, subject to all applicable laws, rules, and regulations, and such instructions as the Board of Commissioners may from time to time give.

(b) The functions of the Procurement Office shall be to:

(1) Enter into and administer contracts on behalf of the District of Columbia, including approval of performance bonds when such bonds are required, for all supplies, materials, equipment, and services except as provided in Part V of this order. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each contract in excess of \$25,000, subject also to approval of the executed formal contract by the Board of Commissioners.

(2) Execute change orders under contracts, subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each change order in excess of \$5,000, subject also to approval of the written change order by the Board of Commissioners.

(3) Purchase, in accordance with such instructions as the Director of General Administration may from time to time give, surplus and excess Federal personal property for departments and offices of the District of Columbia Government.

(4) Initiate and develop, in collaboration with departments and offices, up to date and effective purchasing policies and programs for consideration by the Board of Commissioners.

(5) Create and adopt, subject to the approval of the Director of General Administration, the most simplified purchasing procedures in the interest of economizing on administrative costs and expediting action.

(6) Collaborate with Contracting Officers, appointed by the Board of Commissioners as provided for in Part VI herein, in developing and implementing effective contracting procedures which are designed to expedite the work of the Contracting Officers.

(7) Maintain adequate inventories of certain construction materials purchased from the revolving fund as authorized by District of Columbia Appropriation Act for the fiscal year 1912; furnish such materials to District of Columbia departments, offices, and agencies subject to reimbursement of the revolving fund from appropriations of such using departments, offices and agencies; and maintain the sufficiency and integrity of the said revolving fund.

(8) Perform centralized services in connection with contract administration for departments and offices of the District of Columbia Government such as advertising for competitive bids, opening and tabulating bids, preparing formal contracts and bonds after awards are made by the authorized Contracting Officer, and preparing all types of contractual documents, except leases for real property. All such services shall be performed in accordance with operating procedures and administrative requirements as are established by the Procurement Officer, subject to the approval of the Director of General Administration and after transmittal to the Corporation Counsel for comment and advice.

(9) Prepare periodic economic reports dealing with the field of purchasing, and furnish estimated price data when requested by the Budget Officer, D. C.; prepare such other reports as required for internal administrative use or as requested by the Director of General Administration.

(10) Serve as one of the District of Columbia representatives on the Federal Supply Board of the General Services Administration along with such other representatives and with such duties in connection therewith as may from time to time be designated by the Director of General Administration. Collaborate with the Administrative Services Officer in the procurement of surplus and excess Federal personal property.

(11) Serve in an advisory capacity to the Board of Commissioners, the Director of General Administration, and department and office heads in matters pertaining to purchasing and contracting.

(12) Conduct a continuous program of analysis, appraisal, and cataloging of materials and supplies procured for District departments and offices in the interest of standardization and economy. Keep informed on new products manufactured and technological changes and improvements in manufacturing processes and, on the basis of such information, consider, in collaboration with using agencies, alternate or substitute materials.

(13) Furnish, and certify as true, copies of contracts, bonds, and other documents which are in the official custody of the Procurement Office upon application and payment, by persons other than officials of the District of Columbia, of such fees as may be established by the Commissioners. (Added by Order No. 56-609, dated Mar. 27, 1956.)

PART V

Purchasing by departments and offices.—(a) Subject to all applicable statutes, regulations and directives, including controls established by the Procurement Officer, with the approval of the Director of General Administration.

(1) Heads of departments and offices are authorized to purchase or contract for supplies, materials, equipment and services in amounts not exceeding \$100.

(2) Such heads of departments and offices as may from time to time be determined in writing by the Director of General Administration are authorized to purchase or contract for such supplies, materials, equipment and services, in such manner, subject to such restrictions, and in such amounts in excess of \$100 but not exceeding \$1,000, as may be specified in such written determination.

(b) When the public exigencies require the immediate delivery of supplies, materials, or equipment or performance of services, the Director of Buildings and Grounds, D. C., the Director of Highways, D. C., and the Director of Sanitary Engineering, D. C., may purchase or contract for the same in amounts not exceeding \$25,000 subject, when the amount of any such purchase or contract exceeds \$500, to approval by the Engineer Commissioner, D. C., or by one of his Assistants, unless such Director shall certify that it was impractical to obtain such approval.

(c) Authority vested in heads of departments and offices pursuant to paragraph (a) of this Part V may be redelegated by such heads of departments and offices to other officials or employees within their respective organizations.

PART VI

Appointment of contracting officers.—(a) The employees occupying each of the following positions are hereby appointed Contracting Officers for the District of Columbia, subject to all applicable laws, rules, and regulations, and such instructions as the Commissioners may from time to time give:

- (1) Director of Buildings and Grounds, D. C.
- (2) Director of Highways and traffic.
- (3) Director of Sanitary Engineering, D. C.
- (4) Chief, Real Property Division, Administrative Services Office, Department of General Administration. (Amended by order No. 58-989, June 24, 1958.)

(5) Chief, Personal Property Utilization Division, Administrative Services Office, Department of General Administration. (Added by order No. 58-989, June 24, 1958.)

(b) The employees occupying the following positions are appointed Alternate Contracting Officers, and each is authorized to exercise all the powers vested by paragraph (c) of this Part in the Contracting Officer for whom he is named alternate, subject to all limitations upon the powers of such Contracting Officer, during the disability or other absence from duty of such Contracting Officer and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed:

(1) Deputy Director of Buildings and Grounds, and Chief, Office of Design and Engineering, as alternates for Director of Buildings and Grounds, D.C., but said Chief, Office of Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Buildings and Grounds.

(2) Deputy Director of Highways and Traffic, and Deputy Director for Design, Engineering and Research as alternates for Director of Highways and Traffic, but said Deputy Director for Design, Engineering and Research shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Highways and Traffic. (Amended by order No. 59-1290, July 28, 1959.)

(3) Deputy Director of Sanitary Engineering, and Superintendent, Construction and Repair Division as alternates for Director of Sanitary Engineering, D. C., but said Superintendent, Construction and Repair Division shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Sanitary Engineering.

(4) Assistant Chief, Real Property Division, as alternate for the Chief, Real Property Division, Administrative Services Office, but said Assistant Chief shall exercise the powers and authorities herein vested only during the disability or other absence from duty of the Chief. (Amended by order No. 58-989, June 24, 1958.)

(c) Each Contracting Officer is authorized to:

(1) Enter into and administer contracts on behalf of the District of Columbia, including approval of perform-

ance bonds when required, with respect to all types or classes of work now or hereafter placed under his supervision. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each contract in excess of \$25,000, subject also to approval of the executed formal contract by the Board of Commissioners.

(2) Execute change orders under such contracts, subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each change order in excess of \$5,000, subject also to approval of the written change order by the Board of Commissioners.

(d) Whenever a question arises either as to the type or class of work embraced by a particular proposed contract, or whether a particular proposed contract is for equipment, materials, or supplies, such question(s) shall be decided by the Chairman, or in his absence, the Alternate Chairman, of the Contract Advisory Committee; and the said Chairman, or Alternate Chairman, is hereby authorized, by separate action in each specific instance, to place particular items of work under the supervision of any of the Contracting Officers herein appointed, solely for the purpose of entering into and administering contracts on behalf of the District of Columbia for such items of work, even though such item is not of a class or type otherwise under the supervision of such Contracting Officer. In any case where action hereunder by the Chairman or Alternate Chairman is unsatisfactory to any Contracting Officer such action shall, at the request of such Contracting Officer, be referred to the Director of General Administration for decision, or for further referral to the Board of Commissioners for its decision. As used in this subsection "Contracting Officer" shall include the Procurement Officer.

PART VII

Contract Appeals Board, D. C.—(a) There is established a Contract Appeals Board, D. C., consisting of the Corporation Counsel or an Assistant Corporation Counsel designated by the Corporation Counsel, the Senior Assistant to the Engineer Commissioner or another Assistant to the Engineer Commissioner designated by the Engineer Commissioner, and either of two persons, appointed by the Board of Commissioners from among District of Columbia officers and employees who have had practical experience in the administration of Government contracts, as may be designated from time to time by the Chairman of the Contract Appeals Board. Any two members shall constitute a quorum for the transaction of any business of the Board.

No person shall serve as a member of the Board in any case in which the appeal has been taken from the action of a Contracting Officer or Alternate Contracting Officer of the Department of which he is the Director or an employee. The Corporation Counsel or the Assistant Corporation Counsel member designated by him shall serve as Chairman of the Contract Appeals Board, and in his absence the Senior or other Assistant to the Engineer Commissioner shall serve as Chairman. (Subpart (a) was amended to read as above set out, by order No. 56-2212, dated October 30, 1956.)

(b) The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers, including the Procurement Officer, where the contracting officer is unable to satisfy the contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Board of Commissioners may from time to time order. (The last phrase starting with "and such other", was added Dec. 22, 1958, order No. 58-2072.) The decision of the Contract Appeals Board in every case shall be final subject to the limitations of Section 3(b)(2) of Reorganization Plan No. 5 of 1952.

(c) The Contract Appeals Board is authorized to formulate rules governing its own procedures, including the

establishment of time limitations and the development of methods of perfecting appeals to it.

(d) The Chairman of the Contract Appeals Board shall be responsible for obtaining the necessary secretarial assistance for the Board, and shall maintain centralized custody over all records pertaining to meetings held and actions taken.

(e) The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D. C. Code, 1951 ed., Sec. 1-237) and the members of said Board shall possess the powers vested in the Commissioners by said Act of July 1, 1902.

PART VIII

Contract Advisory Committee.—(a) There is established a Contract Advisory Committee, consisting of the Director of Buildings and Grounds who shall serve as Chairman, and such other members as the Chairman from time to time shall select from among the various District Government departments and offices. The Director of Highways and Traffic shall serve as Alternate Chairman of the Contract Advisory Committee during the absence of the Chairman. Any three members of the said Committee shall constitute a quorum for the transaction of business.

(b) The purpose of the Contract Advisory Committee is to make available to the Board of Commissioners, the Director of General Administration, and the Contracting Officers appointed by the Board of Commissioners, assistance and advice on all contracting matters.

(c) The Procurement Officer shall be responsible for providing the necessary secretarial assistance for the Committee, and for maintaining a central file of its records and reports.

PART IX

Authority to determine fair market prices for products and services of the industrial enterprises of the D. C. Workhouse and Reformatory.—(a) Pursuant to the provisions of Section 3 (a) of Reorganization Plan No. 5 of 1952, effective July 1, 1952, authority is hereby delegated, effective August 12, 1952, to the Director of Corrections, D. C., in collaboration with the Procurement Officer, D. C., to determine, on and after this date, the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D. C. Workhouse and Reformatory. Should the Director of Corrections and the Procurement Officer fail to agree as to the fair market price of any such product or services, their respective recommendations, with reasons therefor, shall be submitted to the Board of Commissioners, D. C., for final determination.

(b) Commissioners' Order P. O. 4315 dated August 12, 1952, is hereby superseded.

PART X

Transfer of functions and positions.—(a) All positions under the existing Purchasing Office are transferred to the Procurement Office. The duties, powers, and authorities of all officers and employees assigned thereto shall continue insofar as they relate to the functions enumerated in Part IV herein.

(b) All functions and positions including the duties, powers, and authorities of all employees assigned thereto of the Contract and Bond Section, Department of General Administration, are transferred to the Procurement Office.

(c) All functions, duties, powers, authorities, property, and records of the existing Contract Board not otherwise herein provided for are transferred to the Procurement Office.

(d) All records of the existing Automobile Board are transferred to the Procurement Office.

(e) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions referred to in (a) and (b) in this Part are transferred to the Procurement Office.

PART XI

Abolition of agencies.—The following listed Office, Section and Boards are abolished:

Purchasing Office, including the office of the head thereof.

Contract and Bond Section, Department of General Administration.

Automobile Board.

Contract Board.

PART XII

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART XIII

Effective date.—This order becomes effective September 17, 1953.

REORGANIZATION ORDER NO. 30.—MAINTENANCE, PRESERVATION AND DISPOSAL OF RECORDS OF ALL COMPONENTS OF THE DISTRICT OF COLUMBIA GOVERNMENT COVERED BY REORGANIZATION PLAN NO. 5 OF 1952

Reorg. Ord. No. 30, C. O. 302,970.B, C. O. 302,853/14, C. O. 301,129, April 23, 1953, ordered that:

PART I

Purpose and scope.—This order establishes responsibilities for the maintenance, preservation, and disposal of records of all components of the District of Columbia Government covered by Reorganization Plan No. 5 of 1952. It is intended (1) to provide safeguards against the removal, alienation, or destruction of records except as provided in this order, and (2) to provide for the orderly disposal of records which no longer have sufficient value to warrant further preservation.

PART II

Definitions.—When used in this order—

a. The term "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any component of the Government of the District of Columbia in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by that component or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government of the District of Columbia, or because of the informational value of data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of published or processed documents are not included within the meaning of the term "records" as used in this order.

b. The term "component" means any department, office, board, division, agency, bureau, commission, or other unit of the District of Columbia Government listed in Section 1 of Reorganization Plan No. 5 of 1952, or the office, offices, agency or agencies succeeding to the functions of said department, office, board, division, agency, bureau, commission or other unit under the authority of said Reorganization Plan No. 5 of 1952.

c. A "record schedule" is an itemized list of those records which will be retained (1) for a specified period of time, (2) until the occurrence of a specific event, or (3) permanently. When approved by the Board of Commissioners, such schedule shall constitute authority, at the end of the retention period or periods specified in such schedule, to dispose of those records listed therein which are not to be retained permanently.

PART III

The Director of General Administration.—The Director of General Administration shall have the primary responsibility for the development of an active, continuing records management program. He shall:

a. Issue instructions and render advice and assistance to heads of all components in the preparation of records schedules.

b. Prepare and submit for the final approval of the Board of Commissioners schedules covering the retention

of records common to several or all District Government components.

c. Review records schedules submitted by heads of District Government components.

d. Obtain the opinion of the Corporation Counsel and of any other District officer deemed officially concerned, wherever a records schedule has the effect of authorizing the destruction of records.

e. Submit all such records schedules to the Board of Commissioners, with his recommendation, for action.

f. Review all proposals to microfilm records, whether or not the ultimate destruction of the original records is involved.

PART IV

Heads of departments and offices.—The head of each District Government component shall be responsible for preparation and submission to the Director of General Administration of the following types of records schedules:

a. Comprehensive schedules covering all records essential temporarily or permanently to the performance of the component's functions. Such schedules are to be completed not later than June 30, 1954.

b. Partial schedules covering records for which retention periods may be determined prior to completion of the comprehensive schedules.

PART V

Disposal of Records.—a. The power to authorize the disposal of records remains with the Board of Commissioners and is not delegated by this order. This order does not rescind any authorizations to destroy records approved by the Board of Commissioners prior to the effective date of this order.

b. Prior to destruction in accordance with approved records schedules, any records created before January 1, 1921, shall be offered to the Librarian, District of Columbia.

c. Records pertaining to claims and demands by the District of Columbia Government, or against it, or to any accounts in which the District Government is concerned, either as debtor or creditor, shall not be destroyed until such claims, demands, and accounts have been settled or adjusted.

d. Nothing in this order shall be construed as limiting the authority of the Comptroller General of the United States in prescribing accounting systems, forms, and procedures, or lessening the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the General Accounting Office, including the responsibility of the District Government for the preservation of fiscal records remaining on its premises for on-the-site audit by General Accounting Office.

PART VI

Abolition of Committee.—The Committee on the Microfilming and Disposal of Obsolete Records is abolished and its records ordered transferred to the general files, Administrative Services Office, Department of General Administration.

PART VII

Effective date.—This order shall become effective on and after April 23, 1953.

To heads of departments and offices:

Subject: Retention and Disposal of Records.

Reorganization Order No. 30 abolishes the Committee on the Microfilming and Disposal of Obsolete Records and assigns to the Director of General Administration certain responsibilities for developing procedures for the efficient management of records. The order is applicable to all elements of the District of Columbia subject to the provisions of the Reorganization Plan No. 5 of 1952.

This order follows as closely as seems practicable at this time the recommendations contained in a report prepared for the District Government by the National Archives and Records Service. For the present, emphasis will be placed on the preparation of schedules establishing normal retention periods for all classes of records. Wherever such a schedule provides that a record be retained for only a limited period of time, the schedule, in effect, authorizes the destruction of the record. Such

schedules require the approval of the Board of Commissioners since the power to authorize destruction of records is not delegated by this Reorganization Order.

The procedure outlined in this order differs from earlier District Government practice in that it stresses the preparation of lists of all records essential to the performance of a specific function, rather than piece-meal requests for authority to destroy obsolete records. Modern records management recognizes that sound decisions on what records may be destroyed can not be made without full information on which records will be retained. Such lists are therefore called "retention" rather than "disposal" schedules. A "comprehensive" records schedule is intended to cover the complete record plan, including the manner of filing, for all records essential to the performance of a well-defined function. A sample comprehensive schedule is illustrated in Appendix A.

The difficulties of completely covering all the records of all elements of the District of Columbia Government are not underestimated. A comprehensive schedule can only be drawn up after the relationships between the various types of records have been carefully analyzed. This analysis usually pays for itself by bringing to the attention of responsible operating officials the unnecessary copies and complex record-making practices continued largely because no one in authority has given records practices much attention. The target date of June 30, 1954, provides ample, but by no means excessive, time for completion of these comprehensive records retention schedules.

Prior to that date, heads of departments and offices should submit "partial" schedules, covering those categories of records on which decisions can be made at once.

A third type of schedule is known as a "General Schedule". Such schedules cover fiscal, personnel, and other records common to several or all departments or offices. Because these schedules are designed to cover records problems common to several agencies, they will not always precisely fit the needs of a given office. The authorizations and recommendations of the General Schedules may be used in their entirety or in part; they are permissive, not mandatory. Responsibility for development of these General Schedules is assigned to the Director of General Administration. The scope of the General Schedules, together with several sample schedules, is shown in Appendix B.

HOW TO START SCHEDULING

In spite of the apparent magnitude of the problem, substantial progress can be made without serious difficulty. No special forms, data on the file equipment occupied, or inventories of records are necessary. It is believed that study of the sample schedules in the appendices will be more useful than elaborate written instructions.

The preparation of a comprehensive schedule, however, normally requires the following steps:

1. Determine the unit or function to be covered by the schedule.

2. Assign responsibility for coverage of each of the operating units to one person with adequate knowledge of the unit's files.

3. Describe each record item or file deemed essential, including the present file arrangement.

4. Estimate the length of time the record need be retained for administrative, audit, or legal uses.

5. Review the present file arrangement for practicality of removing records from files at end of the retention period. If the present file arrangement does not lend itself to easy removal, indicate a change in file arrangement that would facilitate disposal or transfer.

6. Justify the retention periods, item by item.

Experience in District Government offices where such scheduling has been attempted indicates that the average schedule will contain not more than a dozen items and that a person familiar with the unit's operations can complete the first five steps within a few hours. The establishment of the final retention period and the development of a detailed justification may require much more time and experienced assistance.

The Management Office, Department of General Administration, will make available the services of a records specialist to:

a. Give instructions to groups of persons designated by department heads to prepare the preliminary drafts of schedules.

b. Give individual assistance in the revision of file arrangements and in the final preparation of schedules.

Arrangements for obtaining such assistance may be made by calling Daniel F. Noll, Management Office, Extension 721.

APPENDIX A

SAMPLE OF A COMPREHENSIVE RECORDS SCHEDULE

This type of schedule is called "comprehensive" because it presents the complete record plan for an office performing a well-defined function.

It includes records to be retained permanently as well as those which may be destroyed within a few years or months.

Such a schedule can be drawn up only after the relationships between the various types of records have been carefully analyzed. Such analysis, though frequently time-consuming, usually has one or more of the following advantages:

a. Unnecessary record-making operations are easily spotted.

b. Sound decisions on what records can be destroyed are difficult unless those to be kept have been determined.

c. Forms can be eliminated or simplified when their purpose and place in the complete plan are clearly defined.

d. Filing methods are recommended to reduce current costs and to facilitate transfer to storage or disposal.

RECORDS RETENTION SCHEDULE No. —

Inheritance and Estate Tax Records.

This schedule is intended to cover all records essential to the administration of Title V of the D. C. Revenue Act of 1937 and its amendments. Authority to dispose of records of estates where the tax liability has not been satisfied is not to be implied from this Records Retention Schedule.

Item No.	Description of records	Retention period
1.	<i>Case folders of individual decedents.</i> —Includes taxpayers' "returns", certified copies of wills, copies of petitions to Probate Court, notices from banks on transfers of assets, paid copies of Collector's coupons, and related papers. Filed by (1) open and closed case, (2) by years and then alphabetic. RETAIN, after year of death-----	11 years
2.	<i>Case folders of non-resident decedents.</i> —Include affidavit claiming domicile outside the District of Columbia or other exemption from the tax, and related papers. Filed by calendar years, and then alphabetic. RETAIN, after year of death-----	4 years
3.	<i>Ledger cards of individual accounts.</i> —Filed by (1) open and closed accounts, (2) by years and then alphabetic. RETAIN, all records-----	Permanently
4.	<i>"As rendered" copies of tax bills.</i> —Filed by date of billing. RETAIN, after close of fiscal year of billing-----	4 years
5.	<i>"As paid" copies of Collector's coupons.</i> —Filed separately from 1937 to date in one alphabetic sequence. Discontinue this separate file and place coupon in case folder at time of its transfer to closed file described in Item No. 1. RETAIN, after discontinuance of separate file-----	4 years

JUSTIFICATION OF RETENTION PERIODS

The Revenue Act of 1937, Title V, makes no provision regarding either the retention or disposal of records. It

does provide, however, that inheritance and estates taxes shall be a lien on property or interest for a period of not more than 10 years from the date of death.

Item 1. Case folders of individual decedents.—Retention for 11 years is based primarily on the 10-year lien period, plus one year to cover contingencies. This rule applies to cases that have been "closed". Cases still "open" 10 years after the date of death are not eligible for destruction under this schedule.

Item 2. Case folders of non-residents.—All administrative needs for these records will have been served within 4 years, since these files include the folders on cases where the claim of non-residence is considered by the Assessor to have been clearly proved. In all doubtful cases, the Assessor requires the filing of a full "return" and the records are transferred to the files described in Item 1. Since a ledger card is made for each non-resident affidavit received, the long-term need for an index and summary record of non-resident claims will be met by the retention of the ledger cards as provided in Item 3.

Item 3. Ledger cards of individual accounts.—These ledger cards are, in fact, a summary record of all returns or affidavits filed, whether or not a tax was actually assessed. Since these cards represent the most compact summary of all important transactions and since their alphabetic arrangement by year of death meets all reasonable indexing requirements, permanent retention of these records is recommended.

Item 4. "As rendered" copies of tax bills.—For a limited time, usually not more than 12 months, these files may be useful in verifying the address to which the tax bill was mailed. Retention for 4 years would appear to meet all administrative requirements.

Item 5. "As paid" copies of Collector's coupons.—The "paid" copies of the Collector's coupons are used to post payments to the ledger cards. When the posting is completed, the coupon serves as notice to the file clerk that the case folder should be transferred from the "open" to the "closed" files. In the past, the paid coupons have been filed in one alphabetic file covering the years from 1937 to date. Since this "paid" index does not include outstanding accounts or records of persons filing returns, but not taxable, the ledger cards appear to be a more complete master index. It is recommended that the "paid" coupon be filed in the case folder at the time of its transfer from the "open" to "closed" file.

For the Custodian of the Records:

By -----
(Signature and title)

For the Director of General Administration:

By -----
(Management officer)

For the Corporation Counsel:

By -----
(Signature and title)

Other concurrences:

APPENDIX B

SAMPLE GENERAL SCHEDULES

The General Schedules are intended to cover the retention of personnel, fiscal and other records common to several or all departments.

The Director of General Administration is responsible for the preparation of the following General Schedules:

1. Personnel Records.
2. Payroll and Pay Administration Records.
3. Procurement and Supply Records.
4. Property Disposal Records.
5. Budgeting Records.
6. Accountable Officers' Accounts.
7. Revenue and Expenditure Accounting Records.
8. Stores, Plant, and Cost Accounting Records.
9. Travel and Transportation Records.
10. Motor Vehicle Operating Records.
11. Space and Maintenance Records.
12. Communications Records.
13. Printing, Binding, and Duplicating Records.
14. Informational Services Records.
15. Occupational and Professional Examining Records.

With the exception of Schedule No. 15, these General Schedules will be based on schedules covering similar records of Federal agencies which have been approved by the Comptroller General and a Joint Congressional Committee on the Disposition of Executive Papers.

Each General Schedule has three parts: (1) an introductory statement of the class of records covered by the schedule, with exceptions; (2) the schedule itself; and (3) an explanation of the reason for the retention or disposal of each type of record covered.

An important feature of the introductory statement is the earliest date covered by the schedule. In the main, records systems were not sufficiently standardized prior to about 1920 to permit coverage by a General Schedule. Early accounting records, furthermore, may have values for historical or legal research that will not be found in more modern fiscal records. In using General Schedules, the earliest dates and exceptions contained in the introductory statement should be carefully noted. Authorizations for the disposal of earlier records will normally be requested separately.

The two sample schedules illustrated in this Appendix are tentative and have not been submitted to the Board of Commissioners for final action.

GENERAL RECORDS SCHEDULE 6

ACCOUNTABLE OFFICERS' ACCOUNTS

Accountable officers' accounts include record copies of all papers concerned with the accounting for, availability, and status of funds. "Accountable Officers" are of two types: (a) the Disbursing Officer who accomplished the actual payment of monies and (b) the Certifying Officer whose signature on a summary schedule attests to the authenticity of vouchers listed on the schedule. The Certifying Officer, who is bonded, takes the responsibility of approving payments to be made by the Disbursing Officer. Within the District of Columbia Government, most funds are collected and disbursed by the Collector of Taxes and the Disbursing Officer, D. C., respectively. The Chief Accountant, formerly the Auditor, is the primary Certifying Officer. The Chief Accountant actually has official custody of most of the records covered by this schedule.

A number of offices, however, receive funds and make disbursements from individually maintained bank accounts. This is true of many of the boards issuing licenses to engage in certain occupations and professions. Although officials of many of these boards, therefore, are "accountable officers", the fiscal and other records of these boards will be covered in a separate General Schedule.

This General Schedule does not apply to:

- a. Records created prior to January 1, 1921, disposal of which will be separately authorized.
- b. Payrolls and employees earnings records, which will be covered by General Schedule 2, when completed.
- c. Originals of contracts which are required to be kept by the Auditor or Secretary to the Board of Commissioners. These are now separately maintained under the provisions of early laws which will apparently require amendment by Act of Congress.

Item No.	Description of records	Retention period
1.	Original disbursing returns.—Includes originals of accounts current, all supporting vouchers, schedules, documents and related papers, retained on D. C. premises for on-the-site audit by representatives of the General Accounting Office. Filed in voucher number sequence. RETAIN, after period covered by account -----	12 years
2.	Copies of disbursing returns.—Includes memorandum copies of accounts current, all supporting vouchers, schedules, documents, and related papers, retained prior to the adoption of on-the-site audit. Filed in voucher number sequence. RETAIN, after period covered by account -----	4 years

Item No.	Description of records	Retention period
3.	Notices of General Accounting Office exceptions.—Formal or informal, and related correspondence. Filed chronologically. RETAIN, after reported cleared by General Accounting Office-----	1 year
4.	Certificates of settlement.—Includes copies of certificates of accounts of accountable officers, statements of differences, and related papers. a. Closed accounts, supplemental settlements, and final balance settlements. RETAIN, after date of settlement-- b. Periodic settlements. RETAIN, until subsequent settlement certificate is received.	2 years
5.	Records relating to the availability, collection, custody, and deposit of funds.—Includes appropriation warrants. Filed chronologically. RETAIN, after date of document-----	4 years
6.	Administrative correspondence.—Reports and data relating to voucher preparation, administrative audit, and other internal accounting and disbursing operations, EXCEPT "record copies" of accounting and auditing instructions, manuals or procedures. Filed by subject. RETAIN, after close of fiscal year-----	4 years

JUSTIFICATION OF RETENTION PERIODS

Item 1. Original disbursing returns.—These records are technically the property of the General Accounting Office, left on District Government premises for on-the-site audit. Destruction after 12 years of all records not involved in claims is authorized by a letter from the Comptroller General, dated -----.

Item 2. Copies of disbursing returns.—Under 68 Stat. 101, the General Accounting Office is required to complete its audit of accounts within three years from the date of the submission of the account. The retention of these memorandum copies for four years provides one additional year beyond this statutory requirement. Necessary reference after the four-year period can be made to the originals which are retained for 12 years by the Audits Division, General Accounting Office. The three-year rule applied by statute to the Comptroller General's audit is also held to be applicable to internal and management audits conducted by District auditors. These records and those covered by Items 5 and 6 need not be retained because audits by the General Accounting Office or internal or management audits are not known to have been completed.

Items 3 and 4.—Exception and certificate files are scheduled for disposal after periods based on clearance by the exception as well as by total accounts.

Item 5. Availability of funds.—These records relating to the availability, deposit, and status of available funds are held for the same four-year period provided for the memorandum copies of disbursing returns which reflect the expenditure of funds. Key ledger records summarizing disbursing accounts are retained for substantial periods in the Office of the Treasurer of the United States, Treasury Department. The originals of appropriation warrants, Treasury Department copies, are not scheduled for disposal.

Item 6. Administrative correspondence.—These are the general files of routine correspondence relative to the internal operation of the accountable officer's unit. "Record copies" of directives received or issued, written accounting or auditing procedures, or files on cases establishing precedents or policy should be retained permanently.

GENERAL RECORDS SCHEDULE 14

INFORMATIONAL SERVICE RECORDS

The records included in this schedule are not limited to formally established information or public relations

offices. They will be found as part of the general correspondence files of almost any operating unit. Though not generally voluminous, they are frequently retained longer than necessary because they become intermingled with other materials on many different subjects.

Their disposal will be facilitated by filing in chronological order under not more than two subjects: (1) "Requests and Referrals" and (2) "Complaints and Suggestions". The former will usually be disposable after three months; the later, after six months.

It is the intent of this schedule to cover routine inquiries and criticisms received from individual members of the public. Exceptions will usually be made for civic groups, members of other governmental agencies.

No limit is placed on the date of the earliest records disposable under this General Schedule.

Item No.	Description of records	Retention period
1.	<i>Requests for information.</i> —Consists of letters of inquiry and replies thereto involving no administrative decision, no special compilations or research, including requests for publications, blank forms, etc. File under single subject and chronologically thereunder. RETAIN, after close of months involved-----	3 months
2.	<i>Referrals.</i> —Consisting of acknowledgements of inquiries referred to other District or Federal agencies, copies of referral letters, etc. File under single subject and chronologically thereunder. RETAIN, after close of month involved-----	3 months
3.	<i>Complaints and suggestions.</i> —Consists of letters of complaints and suggestions, including anonymous letters, and replies to them, where no investigation, referral, or other administrative action was taken. RETAIN, after close of month involved-----	6 months

JUSTIFICATION OF RETENTION PERIODS

Item 1. Requests for Information.—These records are of transitory value and after a lapse of a specified period of time will cease to have sufficient value to warrant their preservation. In many cases, the letter requesting a publication or blank form can advantageously be returned with the publication.

Item 2. Referrals.—Inquiries referred to other components of the District Government or to Federal agencies generally require acknowledgement. In most cases, retention for three months will be sufficient.

Item 3. Complaints and suggestions.—Letters of criticism and suggestions for improvements in the public service will normally be retained longer than three months. If an investigation and study is necessary, the papers will become part of another subject file. Exceptions may be made for criticisms and suggestions received from civic groups and other government officials, for which subject files are already established.

REORGANIZATION ORDER NO. 31.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Reorg. Ord. No. 31, C. O. 274,993, C. O. 302,853/14, C. O. 302,970.C, P. D. 01.9542, April 30, 1953, as amended July 20, 1954, ordered that:

PART I

Police and Firemen's Retirement and Relief Board.—(a) There is established in the Government of the District of Columbia, under the administrative supervision of the Director of General Administration a Police and Firemen's Retirement and Relief Board, to be composed of the following: Personnel Officer, Director of Public Health, Corporation Counsel, Chief of Police, and Fire Chief.

(b) In all cases of relief and retirement of members of the United States Park Police force, a member of the

United States Park Police force, designated by the Superintendent, National Capital Parks, may sit as a member of the Police and Firemen's Retirement and Relief Board; and in all cases relief and retirement of members of the White House Police Force or of members of the United States Secret Service who contribute to the policemen and firemen's relief fund, District of Columbia, a member of the White House Police Force or a member of the United States Secret Service, as appropriate, designated by the Chief, United States Secret Service, may sit as a member of the Police and Firemen's Retirement and Relief Board.

(c) Each member of the said Board is authorized to designate an alternate representative or representatives from among officials and employees within his organization, to exercise, at the meeting of the Board, all the powers vested in the respective member, except that no more than one alternate for each member shall participate at a single Board meeting. Each such alternate shall be a senior assistant of the Member concerned.

(d) The Personnel Officer shall serve as Chairman of the said Board, and the Director of Public Health shall serve as Vice-Chairman, and in the absence of both, the authorized alternate of the Personnel Officer shall serve as Chairman, and in his absence, the alternate to the Director of Public Health shall serve as Chairman.

(e) All authorities and powers exercised by members of the Police and Firemen's Retirement and Relief Board, including those individuals who are designated, from time to time, as alternate members, shall be in accordance with applicable laws, rules and regulations.

PART II

Purpose and scope.—The Police and Firemen's Retirement and Relief Board is established for the purpose of insuring that fair and equitable policies and practices are established and applied in connection with the retirement and the relief of members of the Police and Fire Departments of the District of Columbia, the United States Park Police force, the White House Police force, and the United States Secret Service who contribute to the Policemen and Firemen's Relief Fund of the District of Columbia.

PART III

Functions.—The functions of the Police and Firemen's Retirement and Relief Board shall be to:

(1) Consider all cases for the retirement and the relief of members of the Police and Fire Departments of the District of Columbia, the United States Park Police force, the White House Police force, and the United States Secret Service who contribute to the Policemen and Firemen's Fund of the District of Columbia; consider all cases of retirees of said organization who are seeking an increase in the pension relief allowance which they are already receiving; consider all cases of retirees of said organization who are required to undergo periodic medical examinations in connection with determining whether the relief allowance in such cases should be continued, increased, decreased, or discontinued; and consider all applications for the relief of widows and children under eighteen years of age of said members.

(2) Approve or disapprove all such cases, and fix the amount of pension relief in each instance, as appropriate, except that proposed actions in connection with the relief or the retirement of the Chief of Police and the Fire Chief shall be submitted to the Board of Commissioners for its approval or disapproval, and provided that, at all times, any action taken by the Retirement and Relief Board shall be subject to review by the Board of Commissioners, including final authority to concur in, reject, modify, or reverse such action.

Appeals for review by the Board of Commissioners from a decision made by the Police and Firemen's Retirement and Relief Board, must be made in writing to the Secretary, Board of Commissioners, D. C., not later than thirty (30) days from the date of mailing of such notice of the Board's decision to the last known address of the applicant. (As amended by order dated June 28, 1955.)

(3) Develop and submit to the Board of Commissioners for its consideration, through the Director of General

Administration, over-all policies to insure equitable treatment in the retirement and the relief of individuals coming within the purview of the Police and Firemen's Retirement and Relief Board; and serve in an advisory capacity to the Board of Commissioners, the Director of General Administration, and the department and office heads in all matters pertaining to the retirement and the relief of such individuals.

(4) Perfect and adopt, subject to approval of the Director of General Administration, rules of procedure for the conduct and the guidance of the Police and Firemen's Retirement and Relief Board.

PART IV

Subpoena powers.—The Police and Firemen's Retirement and Relief Board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement or relief of any individual whose retirement or relief is being considered; and any member of the said Board shall have power to administer oaths or affirmations to witnesses appearing before it. Such summons shall be served by a member of the Metropolitan Police or Fire Departments.

PART V

Secretarial assistance.—The Chairman of the Police and Firemen's Retirement and Relief Board shall be responsible for arranging for necessary secretarial assistance for the Board, and for seeing that reports and records are prepared and maintained in connection with meetings held, findings and recommendations made, and actions taken.

PART VI

Abolition of existing Board.—The existing Police and Firemen's Retiring and Relief Board, including the Office of the Chairman thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This order shall become effective on and after June 1, 1953.

PART IX

The Police and Firemen's Retirement and Relief Board established herein is hereby designated, as agent of the Commissioners, to make all findings of fact necessary in the determination of eligibility for retirement and survivor annuities pursuant to Public Law 85-157 [See Title 4, Chap. 5, D. C. Code], 85th Congress, as approved August 21, 1957, and to take final action in such cases subject to provisions for review set forth in Reorganization Order No. 31, as amended. (Part IX added by order No. 57-1727, dated Sept. 5, 1957.)

REORGANIZATION ORDER NO. 32.—DISTRICT OF COLUMBIA DEPARTMENT OF VETERANS' AFFAIRS (name changed by order dated March 15, 1957, No. 57-471)

Reorg. Ord. No. 32, C. O. 302,853/14, C. O. 301,931, April 30, 1953, ordered that:

PART I

Veterans' service center.—There is established, under the direction and control of the Engineer Commissioner, a Veterans' Service Center headed by a Director. The Director shall have full authority over such Center and all functions and personnel assigned thereto, including the power to redelegate to other officials of the Veterans' Service Center such of the powers herein delegated as, in his judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Organization.—There shall be established in the Veterans' Service Center so many organizational components and positions with such duties and responsibilities as

its Director, with the approval of the Engineer Commissioner, shall from time to time determine.

PART III

Functions.—The Veterans' Service Center established by this order shall perform the functions previously assigned to the Division of Services to Veterans (including the existing D. C. Veterans' Service Center).

PART IV

Transfer of positions.—(a) There are transferred to the Veterans' Service Center all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Division of Services to Veterans (including the existing D. C. Veterans' Service Center).

(b) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the Veterans' Service Center.

(c) The existing Division of Services to Veterans (including the existing D. C. Veterans' Service Center), and the office of the head thereof, are abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VI

Effective date.—This Order shall become effective on and after May 10, 1953.

REORGANIZATION ORDER NO. 33.—BOARD OF PAROLE

Reorg. Ord. No. 33, C. O. 273,705, C. O. 302,853/14, May 28, 1953, ordered that:

PART I

Board of parole.—a. There is established a Board of Parole under the direction and control of a Commissioner. The Board shall consist of three members who shall be appointed by the Commissioners and who shall hold office during the pleasure of the Commissioners, two serving without compensation, and the third, designated as the Parole Executive, serving on a full-time, paid basis. The Board shall elect as Chairman one of its two members serving without compensation. A quorum shall consist of any two members.

b. The members of the Board shall have full authority over the organization and all personnel assigned thereto, including the power to redelegate to the Parole Executive or any member of said Board the powers herein delegated, except that the authority to release a prisoner on parole and determine the terms and conditions of such parole, or the authority to terminate a parole or conditional release, or modify the terms or conditions thereof, or to establish procedural rules and regulations for the Board may not be redelegated.

PART II

Purpose.—The Board of Parole is established for the purpose of developing and administering an effective parole system—a system sufficiently flexible to permit the release of an offender at the time when his release under supervision is in the best interest of society; a system free from influence, staffed by persons of professional competence, and administered in such a manner as to foster a constructive public attitude toward the parolee.

PART III

Scope.—The Board of Parole is authorized to exercise and perform such powers, duties and authorities as are exercised and performed by the existing Board of Parole and any member thereof including the member acting as the Parole Executive.

PART IV

Organization.—There shall be established under the Parole Executive so many organizational components and positions with such duties and responsibilities as the

Board of Parole, with the approval of the Commissioner concerned, shall from time to time determine.

PART V

Cooperation of other District Government departments and officials.—The Department of Corrections, and all other agencies and officials of the District shall cooperate with the Board and shall furnish the Board with such information, files, and records as it may deem necessary in the performance of its duties, provided that confidential information and records shall not be required to be produced.

PART VI

Transfer of positions.—a. All positions under the existing Board of Parole, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Board of Parole.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in a. of this Part, are transferred to the new Board of Parole.

PART VII

Abolition of the existing board.—The existing Board of Parole, including the office of the head thereof, is abolished.

PART VIII

Effective date.—This order shall become effective on and after June 21, 1953.

REORGANIZATION ORDER NO. 34.—DEPARTMENT OF CORRECTIONS

Reorg. Ord. No. 34, C. O. 302,089, C. O. 302,853/14, May 28, 1953, as amended December 10, 1953, and August 12, 1954, ordered that:

PART I

Department of Corrections.—There is established, under the direction and control of a Commissioner, a Department of Corrections headed by a Director. The Director shall have full authority over such Department and all personnel assigned thereto, including the power to redelegate to other officials of the Department such of the powers herein delegated as, in his judgment may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Corrections is established to provide for the custody, care, discipline, and instruction of all persons committed to the Workhouse, Lorton Reformatory, Women's Reformatory, and the D. C. Jail in such a manner as to achieve their maximum rehabilitation and reformation.

PART III

Organization.—There shall be established in the Department of Corrections the organizational components listed in Part IV herein, and so many positions with such duties and responsibilities as the Director, with the approval of the Commissioner concerned, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Department of Corrections shall include the following:

a. *Office of the Director.*—Provide executive direction for all activities of the Department. The Director shall make, adopt, and enforce such regulations pertaining to the administration of the institutions of the Department as may be necessary to permit the proper and effective operation thereof.

b. *Workhouse Division.*—Operate an institution for the detention of male misdemeanants and felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons.

c. *Women's Reformatory Division.*—Operate an institution for the detention of female misdemeanants and felons, including provision for the custody, rehabilita-

tion, care, discipline, and instruction of such persons.

d. *Lorton Reformatory Division.*—Operate an institution for the detention of male felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons.

e. *Jail Division.*—(1) Operate an institution which shall insure maximum security in the detention of male and female misdemeanants and felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons. (2) Provide for the custody and discipline of, and care for persons awaiting trial, sentence, or transfer to other institutions.

f. *Industries Division.*—Provide for the vocational training and rehabilitation of inmates by means of the operation of manufacturing and service activities.

g. *Engineering Division.*—Provide for the maintenance of buildings and grounds, the construction of new buildings, the operation of utilities and railroad facilities, and the supervision of telephone and radio communications.

h. *Business Division.*—Provide for accounting, purchasing and warehousing services for the Workhouse, Women's Reformatory, and Lorton Reformatory Divisions.

i. *Agricultural Division.*—Operate the institutional farm in connection with the Workhouse for the rehabilitation of inmates, and for providing farm produce for the feeding of inmates in the Lorton Reformatory, the Women's Reformatory, the Workhouse, and the Jail.

j. *Transportation Division.*—Operate and maintain vehicular, engineering, construction, and farm equipment.

PART V

Support of District prisoners in institutions not under D. C. government.—The Department of Corrections shall summarize and evaluate background of inmates and, where appropriate make recommendations to representatives of the Attorney General for placement of prisoners in institutions not under the District of Columbia government. In addition, it shall process vouchers submitted by Federal agencies for care and treatment of District of Columbia prisoners and advise the Accounting Office of propriety of payment.

PART VI

Inmate welfare fund.—a. The Department of Corrections is hereby authorized to operate canteens for the purpose of selling merchandise to inmates and employees of the several institutions operated by said Department at a nominal profit which shall be deposited in the Inmate Welfare Fund, said fund to be used in the discretion of the Director of the Department for the general welfare of the inmates.

b. The Director of the Department shall keep records covering the operation of canteens and the provision of services of the type referred to in this Part, shall establish such rules and regulations consistent with good prison practice as will provide for strict accountability of all funds, and will submit the accounts to the Internal Audit Office for audit not less than once each six months.

PART VII

Transfers to new department.—(a) All positions under the existing Department of Corrections, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Department of Corrections.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in (a) of this part, are transferred to the new Department of Corrections.

PART VIII

Abolition of the existing department.—The existing Department of Corrections, including the office of the head thereof, is abolished.

PART IX

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This order shall become effective on and after June 21, 1953.

PART XI

Institute for Criminological Research.—a. There is hereby established as an organizational component of the Department of Corrections an Institute for Criminological Research, including an Advisory Council for Criminological Research. The Director, Department of Corrections shall serve as the Research Coordinator for said Institute.

b. The Institute for Criminological Research is established for the purposes of conducting research into the causes and motivations of crime and the individual traits of offenders, and to evaluate scientifically the correctional and reformatory practices of the Department of Corrections.

c. The Advisory Council for Criminological Research shall consist of such members with wide knowledge of and interest in the field of criminology as the Board of Commissioners may from time to time appoint. Terms of appointment shall be at the pleasure of the Board of Commissioners. The functions of said Council shall be to provide guidance and advice to the Institute. (Part XI was added by order No. 56-996, dated May 17, 1956.)

REORGANIZATION ORDER NO. 35.—ALCOHOLIC BEVERAGE CONTROL BOARD

Reorg. Ord. No. 35, G. F. 25-100, C. O. 302,853/14, June 16, 1953, ordered that:

PART I

Alcoholic Beverage Control Board.—a. There is established, under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members who shall be appointed by the Board of Commissioners, and which shall be headed by a Chairman designated by the Board of Commissioners from among the three members. All appointments shall be for terms of four years, except such appointments as may be made for the remainder of unexpired terms. A quorum shall consist of any two members.

b. The members of the present Alcoholic Beverage Control Board are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

c. The Alcoholic Beverage Control Board shall have full authority over all functions and personnel assigned thereto, including the power to redelegate to its employees such ministerial duties and responsibilities as said Board, with the approval of the Commissioner to whom assigned, shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—There shall be established under the Alcoholic Beverage Control Board so many positions with such duties and responsibilities as the said Board, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Powers, authorities, and jurisdiction.—All powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the existing Alcoholic Beverage Control Board, including its chairman and members, shall be hereinafter vested in the new Alcoholic Beverage Control Board.

PART IV

Appeals.—All appeals from actions of the Alcoholic Beverage Control Board now authorized by law to be made to the Board of Commissioners, shall continue to be made to the Board of Commissioners.

PART V

Transfers to new board.—a. There are transferred to the Alcoholic Beverage Control Board all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Alcoholic Beverage Control Board.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions transferred are transferred to the Alcoholic Beverage Control Board.

PART VI

Abolition of existing board.—The existing Alcoholic Beverage Control Board, including the office of the Chairman thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with provisions of this Order are, to the extent of such conflict, repealed.

PART VIII

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 36.—MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD

Reorg. Ord. No. 36, G. G. 36-400, C. O. 302,853/14, June 16, 1953, ordered that:

PART I

Minimum Wage and Industrial Safety Board.—a. There is established under the direction and control of a Commissioner, a Minimum Wage and Industrial Safety Board headed by a chairman, and consisting of three members, who shall be appointed by the Board of Commissioners. As far as practical, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public. The Board shall elect a chairman from among its own members. All appointments shall be for a term of three years, except such appointments as may be made for the remainder of unexpired terms. A quorum shall consist of any two members.

b. The members of the present Minimum Wage and Industrial Safety Board are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

c. The Minimum Wage and Industrial Safety Board shall have full authority over all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of said Board such powers herein delegated as, in its judgment, may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—There shall be established in the Minimum Wage and Industrial Safety Board so many organizational components and positions with such duties and responsibilities as the Board, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Transfers to new board.—a. There are transferred to the Minimum Wage and Industrial Safety Board all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Minimum Wage and Industrial Safety Board.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are transferred to the Minimum Wage and Industrial Safety Board.

PART IV

Abolition of existing board.—The existing Minimum Wage and Industrial Safety Board, including the office of the Chairman thereof, is abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with provisions of this Order are, to the extent of such conflict, repealed.

PART VI

Payment and collection of wages.—The Board shall administer the Act to provide for the payment and collection of wages in the District of Columbia, Public Law 953, 84th Congress, 2d Session (§§ 36.601 to 36.610). This authority shall include, but not be limited to, the following functions:

a. To develop and propose to the Board of Commissioners any regulations that may be necessary.

b. To investigate and hold hearings on any alleged violations, including claims that wages have not been paid in accordance with the act, and that such unpaid wages constitute enforceable claims against employers.

c. In its discretion, upon request of an employee, to take an assignment in trust of wages found by the Board to be due, together with any claim for liquidated damages. Upon such assignment, the Board shall have power to settle and adjust any such claim or claims on such terms as it may deem just or to initiate appropriate legal action.

d. To administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceedings before it. (Order No. 56-1940, dated Sept. 20, 1956, renumbered existing Part VI to be Part VII and added the above new Part VI.)

PART VII

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 37.—DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Reorg. Ord. No. 37, G. F. 46-300, C. O. 302,853/14, June 16, 1953, ordered that:

PART I

District Unemployment Compensation Board.—a. There is hereby established the District Unemployment Compensation Board, under the direction and control of the Board of Commissioners, to be composed of the Commissioners of the District as members ex-officio, and one representative of employees and one representative of employers to be appointed by the Commissioners. Each such representative shall be a resident of the District and shall hold office for a term of three years from the date of appointment; except that any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term.

b. The President of the Board of Commissioners of the District shall serve as Chairman of the said Board.

c. The representatives of employers and employees serving as members of the present District Unemployment Compensation Board are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

d. The District Unemployment Compensation Board shall have full authority over said Board and all functions and personnel assigned thereto including the power to redelegate to other officials and employees of the District Unemployment Compensation Board such of the powers herein delegated as, in their judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization and functions.—a. There is established in the District Unemployment Compensation Board the position of Executive Officer, and such other organizational components and positions with such duties and responsibilities as said Board may from time to time determine.

b. The Executive Officer shall be appointed by said Board and shall serve as Secretary, and shall act in the name of said Board in all matters specifically delegated by said Board, including the performance of functions previously assigned to the Executive Officer of the existing District Unemployment Compensation Board.

PART III

Transfers to new Board.—a. There are transferred to the District Unemployment Compensation Board all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing District Unemployment Compensation Board.

b. All positions, personnel, property, records, and unexpended balances of appropriation, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the District Unemployment Compensation Board.

PART IV

Abolition of existing Board.—The existing District Unemployment Compensation Board is abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order, are, to the extent of such conflict, hereby repealed.

PART VI

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT

Reorg. Ord. No. 38, G. F. No. 4-401, June 18, 1953, ordered that:

PART I

Fire department.—a. There is hereby established, under the direction and control of the President of the Board of Commissioners, a Fire Department, headed by the Fire Chief. The Fire Chief shall have full authority over such Department including:

1. The power to redelegate to other officials of the Department such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration.

2. Expenditure of appropriated and other funds, regardless of their source, which are provided for carrying out the functions of the Fire Department and its constituent units.

3. Supervision and control over equipment and property, both personal and real.

b. All authority vested in the Fire Chief shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Fire Department is established for the purpose of providing the maximum protection of life and property in the community, with particular reference to the prevention of fires before they occur and to the expeditious extinguishing of fires after they occur, and also with reference to providing various emergency services in connection with protecting life and property. (First sentence amended Aug. 27, 1957, order No. 57-1668; eff. Sept. 6, 1957.) The work of fire prevention, detection, and suppression is especially important during periods of disaster, therefore, in order to prepare for the most effective utilization of the fire services during emergencies and for civil defense purposes, the mission of the Fire Department includes special natural disaster and civil defense planning activities such as developing emergency water supplies, inspecting the storage of explosives and flammables, developing and conducting fire-fighting training programs, and providing or recommending provision for emergency equipment and facilities which may be needed by the fire services in civil defense or in connection with natural disaster.

The Fire Department shall have coordinating supervision over the District of Columbia Emergency Ambulance Service. (Last sentence added by order No. 57-1668, Aug. 27, 1957; eff. Sept. 6, 1957.)

PART III

Organization.—There are hereby established in the Fire Department the following organizational components:

- a. Office of the Fire Chief.
- b. Fire Fighting Division.

- c. Fire Prevention Division.
- d. Apparatus Division.
- e. Training Division.
- f. Administrative Division.

PART IV

Functions.—a. Office of the Fire Chief:

1. Develops and proposes for consideration by the Board of Commissioners, major programs and policies on fire prevention and fire suppression.

2. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all of the fire prevention and fire fighting programs, services, and operations of the District of Columbia.

3. Advises and assists the President of the Board of Commissioners on all District of Columbia matters relating to fire prevention and fire fighting.

4. Develops, presents, and justifies departmental budget estimates.

5. Represents the President of the Board of Commissioners in coordinating fire prevention and the fire fighting programs, services, and facilities of the District of Columbia with those of other communities in the Washington Metropolitan area, and with the Federal Government.

6. Supervises the operation of the District of Columbia Emergency Ambulance Service, including supervision of the Department of Public Health ambulances and crews assigned thereto, and including coordination and dispatching of emergency ambulances made available to the Service by private voluntary hospitals in accordance with the "Operating Instructions for Emergency Ambulances" (including present and future amendments) adopted August 3, 1948 by the Board of Commissioners, D. C. (Par. 6 added Aug. 27, 1957, by order No. 57-1668; eff. Sept. 6, 1957.)

b. Fire Fighting Division:

1. Extinguishes fires in the District of Columbia.

2. Cooperates with authorities and fire fighting organizations of adjacent counties in extinguishing fires in surrounding areas.

3. Conducts routine inspections of buildings and other property for the purpose of eliminating potential fire hazards.

4. Performs rescue activities arising from causes other than fire such as a train wreck, an explosion, or the collapse of a building.

5. Operates the Fire Department ambulances assigned to the District of Columbia Emergency Ambulance Service, and exercises operational authority over Department of Public Health emergency ambulance vehicles, equipment and crews when they are based in and operating from Fire Department facilities. (Par. 5 added by order No. 57-1668, Aug. 27, 1957; eff. Sept. 6, 1957.)

c. Fire Prevention Division:

1. Enforces laws and regulations pertaining to the protection of life and property from fire.

2. Inspects all buildings and structures in the District of Columbia for fire hazards and protective equipment, except private dwellings and buildings, and structures owned or entirely occupied by the Federal Government.

3. Investigates the cause, origin, and circumstances of all local fires; maintains appropriate records of such fires.

4. Initiates appropriate action to secure and maintain modern fire prevention and protection laws and regulations.

5. Collaborates with the head of the Administrative Division and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting and budgetary control purposes.

d. Apparatus Division:

1. Maintains and repairs all vehicles, equipment, and appliances which are owned and used by the Fire Department.

2. Supervises periodic inspections and tests of equipment and apparatus.

3. Assists the Administrative Division in the preparation of technical specifications for the purchase of new apparatus and equipment.

4. Collaborates with the head of the Administrative Division and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting and budgetary control purposes.

e. Training Division:

1. Makes recommendations to the Fire Chief regarding additions, changes, or elimination in the curricula of fire fighting training courses.

2. Instructs and examines new recruits in fire fighting techniques.

3. Instructs and examines all personnel in hydraulics and the operation of fire pumps.

4. Conducts special courses of instruction for personnel of aerial ladder companies in the operation of aerial ladders and their use as water towers.

5. Conducts classes in fire fighting techniques for volunteer civil defense firemen, personnel of Federal and military fire departments, civil defense fire guards, and other groups by special request.

6. Formulates Civil Defense Disaster Plan for Fire Services and revises such plans as required.

7. Prepares and conducts program for recruitment of civil defense volunteer firemen.

8. Compiles and publishes training manuals for regular and emergency firemen.

9. Makes surveys, investigates special situations, and makes recommendations pertaining to the local water supply for fire fighting purposes.

f. Administrative Division:

1. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, administrative services, personnel, and management improvement activities.

2. Prepares, for the Fire Chief, programs and plans of operation including budget requests and justifications, and periodic and annual reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with other divisions of the Fire Department in administrative programs.

4. Plans, develops, and installs standard Department-wide reporting systems which will furnish detailed data on employee performance, personnel requirements, Department operations, and activity costs.

5. Operates main control center for Fire Department and Department of Civil Defense communication systems; keeps appropriate fire alarm records.

6. Operates central dispatching facilities for the Emergency Ambulance Service of the District of Columbia; keeps appropriate dispatch records.

7. Prepares specifications for the purchase of radio equipment, fire alarm boxes, batteries, registers, and fire alarm equipment.

PART V

Transfer to new department.—a. All functions under the existing Fire Department, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Fire Department.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions transferred in a of this Part are transferred to the new Fire Department.

PART VI

*Abolition of existing department.—*The existing Fire Department is abolished.

PART VII

*Repeal of previous orders.—*All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—a. The provisions of this Order, with exception of b in this Part, shall become effective on and after July 31, 1953.

b. In order to fulfill the legal requirements of Reorganization Plan No. 5 of 1952 and, at the same time, provide

for the continuous performance of functions presently delegated to the Fire Chief until July 31, 1953, when all other provisions of this Order automatically take effect, the existing Fire Department is hereby abolished, effective June 18, 1953, and immediately re-created as previously constituted, including all the functions, duties, powers, and authorities vested therein.

REORGANIZATION ORDER NO. 39.—FIRE TRIAL BOARDS

Reorg. Ord. No. 39, G. F. No. 4-600, June 18, 1953, ordered that:

PART I

Fire Trial Boards.—a. There are established in the Government of the District of Columbia the following Fire Trial Boards:

(1) *Regular Fire Trial Board* consisting of three members of the Fire Department with the rank of Captain or higher.

(2) *Special Fire Trial Board* consisting of two members of the Fire Department with the rank of Captain or higher, one of whom shall be designated as Chairman; and one member of the bar of the United States District Court for the District of Columbia.

b. All authorities and powers exercised by members of the aforementioned Boards shall be in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Fire Trial Boards are established for the purpose of insuring fair and impartial trials and reviews in cases involving infractions of discipline or improper procedure by members of the Fire Department, arising from reports made by officials of the Department, or sworn complaints of persons other than members of the Department, which may be referred to such Boards by the Commissioners or the Fire Chief.

PART III

Selection of members.—Members of the Fire Trial Boards shall be selected as follows:

(a) The Fire Chief is authorized to select Fire Department members of all such Boards.

(b) The attorney member of the Special Fire Trial Board shall be selected from two panels of lawyers designated by the Presidents of the Bar Association of the District of Columbia and the Washington Bar Association of the District of Columbia, in accordance with the procedures set forth in Article VII of the "Rules and Regulations Governing the Fire Department of the District of Columbia," except that no attorney shall be appointed to this Board as the attorney member who is an employee of the District of Columbia.

PART IV

Designation of Chairman and Alternate Chairman.—a. The Chairman and Alternate Chairman of the Regular Fire Trial Board shall be designated by the Fire Chief from among the members of such Board.

b. The Chairman and Alternate Chairman of the Special Fire Trial Board shall be designated by the Board of Commissioners from among the members of such Board.

PART V

Functions.—The functions of the Fire Trial Boards shall be as follows:

a. *The Regular Fire Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from reports made by officials of the Fire Department which may be referred to it by the Commissioners or the Fire Chief.

b. *The Special Fire Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from sworn complaints of persons other than members of the Fire Department which may be referred to it by the Commissioners or the Fire Chief.

PART VI

Rules or procedure.—The Fire Trial Boards established herein shall be conducted in accordance with the provisions and requirements contained in Article VII of the "Rules and Regulations Governing the Fire Department

of the District of Columbia," including procedures followed, recommendations made, and actions taken by said Boards.

PART VII

Subpoena powers.—The Fire Trial Boards are authorized and empowered to summon any person before it to give testimony, under oath or affirmation, and/or to produce all books, records, papers, or documents before such Boards. Such subpoenas shall be issued in accordance with existing laws, rules, and regulations.

PART VIII

Abolition of existing boards.—a. All property and records of the existing Fire Trial Boards are transferred to the administrative custody of the Fire Department.

b. The existing Fire Trial Boards, including the offices of the Chairman thereof, are abolished.

PART IX

Conflicting orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order shall become effective on and after June 18, 1953.

REORGANIZATION ORDER NO. 40.—EXECUTIVE OFFICE OF THE BOARD OF COMMISSIONERS

Reorg. Ord. No. 40, G. F. No. 1-201, June 23, 1953, ordered that:

PART I

Executive Office of the Board of Commissioners.—There is established, under the direction and control of the Board of Commissioners, an Executive Office of the Board of Commissioners. The Board of Commissioners shall have full authority over such Office and all personnel assigned thereto.

PART II

Purpose.—The Executive Office of the Board of Commissioners is established for the purpose of providing such special and clerical assistance to the Commissioners as may be required in their administration of the Government of the District of Columbia.

PART III

Organization.—There shall be established in the Executive Office of the Board of Commissioners so many positions with such duties and titles as the Board of Commissioners shall from time to time determine.

PART IV

Transfers.—a. There are hereby transferred to the new Executive Office of the Board of Commissioners all functions and positions of the existing Executive Office of the Board of Commissioners, including all duties, powers, and authorities of all officers and employees assigned thereto.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in (a) of this part are transferred to the new Executive Office of the Board of Commissioners.

PART V

Abolition of existing office.—The existing Executive Office of the Board of Commissioners is abolished.

PART VI

Effective date.—This Order shall become effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 41.—OFFICE OF THE SECRETARY

Reorg. Ord. No. 41, G. F. No. 1-214, June 23, 1953, as amended Feb. 4, 1955, Jan. 31, 1956, and May 3, 1956, ordered that:

PART I

Office of the Secretary.—There is established as part of the Executive Office of the Board of Commissioners,

under the direction and control of the Board of Commissioners, an Office of the Secretary to the Board of Commissioners, headed by the Secretary to the Board of Commissioners. The Secretary shall have full authority over such office and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Office of the Secretary, such of the powers herein delegated, as, in his judgment, are warranted in the interest of efficiency and good administration. In the absence or inability of the Secretary personally to perform his prescribed duties, the Assistant Secretary is authorized to perform such duties in the capacity of "Acting Secretary". This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Office of the Secretary is established to perform ministerial duties for the Board of Commissioners; to maintain the official records of Board actions; to be responsible for the publication of all regulations affecting the general public, and for the maintenance of such regulations in readily accessible form for public use; and to relieve the Commissioners of the burden of taking, in the name of the District Government, action in such matters as the Board of Commissioners shall from time to time specifically delegate to the Secretary. The Secretary also renders all necessary administrative and secretarial services to the Citizens' Advisory Council.

PART III

Organization.—There shall be established in the Office of the Secretary so many organizational components and positions with such duties and titles as the Secretary, with the approval of the Board of Commissioners, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Office of the Secretary include, but are not limited to, the following:

1. Prepares agenda for, and attends in person or by deputy all regular and special meetings of the Board of Commissioners and makes the official records of such meetings.
2. Prepares and, after approval by the Commissioners, issues Commissioners' Orders, proclamations, resolutions, directives, administrative issuances to heads of departments, and statements to the public and press.
3. Maintains the official records of Board actions in the form of books of minutes, orders, letters sent, and approved legal opinions.
4. Administers oaths of office to key District officials and attests to the authenticity of official records.
5. Serves as sole custodian of the Seal of the District of Columbia and is responsible for its proper use.
6. Arranges for the publication of official notices to newspapers, and maintains the records essential to proof-of-publication when required in judicial proceedings.
7. Is responsible for the publication of all regulations affecting the general public and for the maintenance of such regulations in a form readily accessible to the public.
8. On the basis of authority hereby delegated, issues, renews, and revokes Notary Public Commissions, and certifies notarial qualifications on documents to be introduced in evidence in courts of foreign jurisdictions.
9. Maintains a record of bills introduced in Congress affecting the District of Columbia, and, at the end of each session, prepares a compilation, with suitable index, of all such laws passed by Congress.
10. Maintains mailing lists of citizens and other groups interested in the civic affairs of the District.
11. Handles for the Commissioners a wide variety of complaints and inquiries made by the public by letter, telephone, or personal visits in such manner that will best conserve the time of the Commissioners.
12. Renders administrative and secretarial services to the Citizens' Advisory Council.
13. Makes arrangements for official ceremonies for visiting dignitaries, notables, and officials of domestic and foreign governments, and private organizations.

14. Renders informational and other services to the general public.

15. Maintains a follow-up system to insure compliance with Commissioners' decisions and directives by heads of all departments and offices of the District Government.

16. Acts for the Board of Commissioners in carrying out the provisions of Section 4 (c) (2) of the District of Columbia Unemployment Compensation Act as amended by Public Law 721, 83d Congress, approved August 31, 1954. (Added by Order No. 55-229, dated Feb. 4, 1955.)

17. Upon written notification from either the Director of Licenses and Inspections or the Director of Public Health that the owner of any real property in the District of Columbia on whose property a nuisance or an illegal condition exists or from whose property a nuisance or illegal condition has arisen in violation of law or of any regulation made by authority of law cannot be found within the District, arranges for the publication of notice to such owner in the manner required by law or regulation. Notifies the Director of Licenses and Inspections or the Director of Public Health, as appropriate, of the total cost, in each case, of publishing such notice. (Added by Order No. 56-884, dated May 3, 1956.)

PART V

Transfers.—a. There are hereby transferred to the new Office of the Secretary to the Board of Commissioners all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Office of the Secretary to the Board of Commissioners.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available relating to the functions and positions transferred in (a) of this part, are hereby transferred to the new Office of the Secretary of the Board of Commissioners.

PART VI

Abolition of existing office.—The existing Office of the Secretary to the Board of Commissioners, including the office of the Secretary thereof, is hereby abolished.

PART VII

Effective date.—This Order shall be effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

Reorg. Ord. No. 42, G. F.: 9-200, June 23, 1953, as amended August 11, 1954, ordered that:

PART I

a. There is hereby established the Department of Buildings and Grounds under the direction and control of the Engineer Commissioner.

b. The Department of Buildings and Grounds shall be headed by a Director, who shall have full authority over such Department, including:

1. The power to redelegate to other officials and employees of the Department such powers herein delegated, as in his judgment, may be warranted in the interest of efficiency and good administration, except that his authority as contracting officer shall be exercised in accordance with the provisions and limitations of Reorganization Order No. 29 of April 14, 1953.

2. Expenditure of appropriated and other funds, regardless of source, which are provided for carrying out the functions of the Department of Buildings and Grounds and its constituent units.

3. Supervision and control over equipment and property, both personal and real.

c. These authorities shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—a. The Department of Buildings and Grounds is established to provide for the construction, repair and improvement of the physical plant of the District of Columbia and the operation and maintenance of multiple-use buildings, including grounds, and such other

buildings and grounds as are now operated and maintained by the present Department of Construction and the Office of the Superintendent of District Buildings. (The term "multiple-use" buildings, as used in this Order, refers to those buildings which are occupied by more than one District department or agency.)

b. Specifically, the Department of Buildings and Grounds shall supervise building construction, perform repairs and improvements work in the District of Columbia buildings, and operate and maintain multiple-use and other buildings and grounds as outlined herein. The Department's functions will be as follows:

1. Plans and designs, in collaboration with using departments, structures and mechanical equipment for schools, hospitals, health and welfare centers, police, fire, and other municipal activities, other than public highways, bridges, wharves, tunnels, culverts, retaining walls along public highways, and sewer and water systems.

2. Supervises, and inspects new construction, major alterations, and other contract work of District of Columbia buildings.

3. Plans and develops programs and policies for the repair, improvement, operation, and maintenance of District buildings.

4. Makes repairs to and installs improvements in District buildings.

5. Operates and maintains multiple-use buildings and grounds, and such other buildings and grounds as are now operated and maintained by the present Department of Construction and the Office of the Superintendent of District Buildings.

6. Operates and maintains the District of Columbia Morgue buildings and grounds, provided that such operation and maintenance shall be performed on a reimbursable basis for the remainder of fiscal year 1956 and for the entire fiscal year 1957; and provided further that the operation and maintenance thereafter of said buildings and grounds shall be performed by the Department of Buildings and Grounds. (Added by Order No. 56-797, dated Apr. 24, 1956.)

PART III

Organization.—There are hereby established in the Department of Buildings and Grounds the following organizational components:

1. Office of the Director.
2. Office of Program Planning.
3. Office of Design and Engineering.
4. Inspection Division.
5. Repairs and Improvements Division.
6. Operation and Maintenance Division.
7. Office of Business Administration.

PART IV

Functions.—a. *Office of the Director*, Department of Buildings and Grounds:

1. Plans and develops programs and policies for construction, repairs, and improvements, and operation and maintenance of the District of Columbia physical plant.

2. Administers, directs, coordinates, controls, and is responsible for all new construction for the District of Columbia other than that relating to public highways, bridges, wharves, tunnels, culverts, retaining walls along public highways, and sewer and water systems.

3. Serves as consultant and adviser to the Board of Commissioners and to the heads of District departments and offices on construction, repair, improvement, operation, and maintenance of buildings.

4. Develops, presents, and justifies the Department's budget estimates.

5. Upon written notification from the Director of Licenses and Inspections or the Director of Public Health that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, causes said nuisance to be abated or said condition to be corrected in whatever manner considered to be in the best interest of the District Government.

6. Notifies, in writing, the Director of Licenses and Inspections or the Director of Public Health, as appropriate of each abatement of nuisance or correction of illegal condition case completed, furnishing a statement of the exact cost of the abatement or the correction and a request for reimbursement.

7. The authority vested herein to take action to abate a nuisance or to correct an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Buildings and Grounds. (Subparts 5, 6 and 7 were added by order No. 56-213, dated Jan. 31, 1956.)

b. *Office of Program Planning:*

1. Collaborates with using departments in order to evaluate requirements for new construction, repairs, and improvements work, including alterations and additions.

2. Plans, develops, and schedules programs for new construction, repairs, and improvements.

3. Plans, develops, and issues standards and guides for the operation and maintenance of District buildings, including the development of a program for the conservation of fuel.

4. Reviews contract bids and recommends to the Director awards to be made.

5. Collaborates with the head of the Office of Business Administration and other officials in developing and installing policies and procedures, and in preparing forms and reports which will serve to assure adequate reporting of performance and costs for purposes of planning, scheduling, evaluating productivity and progress, budgeting, and accounting.

c. *Office of Design and Engineering:*

1. Provides design, engineering, specification, and landscaping services in connection with new construction, repair, improvement, operation, and maintenance of District buildings.

2. Reviews contractors' shop drawings for conformance with proposed plans for new construction or major alterations.

3. Performs field surveys in connection with site planning, office studies, and design of facilities.

4. Establishes and maintains a current file of maps, drawings, and specifications which show new construction, installations, repairs, and improvements data.

5. Cooperates with the Inspection Division by providing, upon request, supervisory and inspection assistance for new construction, major alterations, and other work performed on District buildings by contract.

d. *Construction Management Division:*

1. Supervises and inspects new construction or major alterations; interprets plans and specifications to assure adherence to contract requirements, specifications, quality of workmanship, and related matters.

[Title of subheading d changed from "Inspection division" to read as above by order dated November 23, 1954.]

2. Approves and certifies contractors' performance reports for payment purposes.

3. Prepares recommendations to the Director regarding need for contract changes; and, as approved by Director, advises contractor of authorized modifications.

e. *Repairs and Improvements Division:*

1. Repairs and performs alterations and improvements to District buildings and structures in accordance with work schedules developed by the Office of Program Planning; utilizes building trades, such as masonry, electrical, plumbing, heating, carpentry, painting, sheet metal, roofing, glazing, and common labor.

2. Operates and maintains necessary shop facilities required for such repair and improvement activities.

3. Maintains and controls the Department of Buildings and Grounds storeroom.

4. Assists the Office of Program Planning in evaluating requirements for the District's physical plant.

f. *Operation and Maintenance Division:*

1. Operates and maintains multiple-use, public comfort station, and such other buildings and grounds as are now operated and maintained by the present Department of Construction and the Office of the Superintendent of District Buildings; provides elevator, custodial, and protective services therefor.

2. Performs minor repairs to such buildings and grounds.

g. Office of Business Administration:

1. Plans, directs, coordinates, and is responsible for the operation of a comprehensive program for the Department's fiscal, procurement, administrative services, personnel, management improvement, and reporting activities.

2. Prepares for the Director, in collaboration with officials of the Department, budget requests and justifications, and periodic and annual reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the officials of the Department of Buildings and Grounds in administering programs of management improvement, including personnel management, property management, and fiscal management.

4. Prepares periodic progress reports to the Director on operational costs and performance.

5. Plans, develops, and installs standard Department-wide reporting systems which will furnish detailed data on employee performance personnel requirements, Department operations and activity costs.

PART V

Transfers.—a. There are hereby transferred to the Department of Buildings and Grounds all functions and positions, with the exception of those positions specified in Part VII herein, of the following named organizations and their subordinate components:

Department of Construction.

Office of the Municipal Architect.

Office of the Superintendent of District Buildings.

Division of Repairs and Improvements. (District of Columbia Repair Shop.)

Construction Division.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available, relating to the functions and positions transferred in (a) of this part, are hereby transferred to the Department of Buildings and Grounds.

PART VI

Abolition of existing agencies.—In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Department of Construction, Office of the Municipal Architect, Office of the Superintendent of District Buildings, Construction Division, and Division of Repairs and Improvements (District of Columbia Repair Shop), including the offices of the heads thereof, are hereby abolished, effective June 23, 1953, and immediately re-created as previously constituted, including all the functions, duties, powers, and authorities vested therein. Coincident with the re-creation of said Department, Offices, and Divisions, the positions of the heads of such Department, Offices, and Divisions are also re-established.

PART VII

Abolition of existing positions.—The following positions are abolished:

1. Supervising Mechanic, Carpentry Foreman, Office of the Superintendent of District Buildings.

2. Trade Foreman, Painting, Office of the Superintendent of District Buildings.

3. Supervisor of Plumbing, Plumbing Foreman, Office of the Superintendent of District Buildings, CPC-8.

4. Supervising Electrician, Electrical Foreman, Office of the Superintendent of District Buildings, CPC-9.

5. Time, Leave and Payroll Clerk, 11-14-7, GS-4, Department of Construction.

6. Assistant Purchasing Clerk, 11-14-6, GS-4, Department of Construction.

7. Skilled Laborer, \$10.32 per day, Department of Construction.

PART VIII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the

provisions of this Order are, to the extent of such conflict, hereby repealed.

PART IX

Effective date.—The provisions of this Order, with the exception of Part VI herein, shall become effective on and after August 15, 1953.

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorg. Ord. No. 43, G. F. No. 36-000, June 23, 1953, ordered that:

PART I

Department of insurance.—There is established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Superintendent shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department of Insurance such of the powers herein delegated as, in his judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—There shall be established in the Department of Insurance so many organizational components and positions with such duties and responsibilities as its Superintendent, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Appeals.—All appeals from actions of the Department of Insurance now authorized by law to be made to the Board of Commissioners shall continue to be made to the Board of Commissioners.

PART IV

Transfers to new department.—a. There are transferred to the Department of Insurance all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Department of Insurance.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are transferred to the Department of Insurance.

PART V

Abolition of existing department.—The existing Department of Insurance, including the office of the head thereof, is abolished.

PART VI

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, repealed.

PART VII

Effective date.—This Order shall become effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 44.—OFFICE OF THE ADMINISTRATOR OF RENT CONTROL

Reorg. Ord. No. 44, G. F. No. 45-1600, June 23, 1953, ordered that:

PART I

Office of the Administrator of Rent Control.—There is established under the direction and control of a Commissioner, an Office of the Administrator of Rent Control headed by an Administrator. The Administrator shall have full authority over such Office and all personnel assigned thereto including the power to re-delegate to other officials and employees of the Office of the Administrator of Rent Control such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Transfers to new office.—a. There are transferred to the Office of the Administrator of Rent Control all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Office of the Administrator of Rent Control.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred in (a) of this part, are transferred to the Office of the Administrator of Rent Control.

PART III

Abolition of existing office.—The existing office of the Administrator of Rent Control, including the office of the head thereof, is abolished.

PART IV

Effective date.—This Order shall become effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 45.—CITIZENS' CIVIL DEFENSE ADVISORY COUNCIL

Reorg. Ord. No. 45, G. F. No. 4-010.1, June 26, 1953, as amended October 22, 1953, ordered that:

PART I

Citizens' Civil Defense Advisory Council.—There is hereby established, under the Board of Commissioners, a Citizens' Civil Defense Advisory Council which shall be composed of so many members as the Commissioners may, from time to time, appoint. Such members, during the period of their appointment on the said Council, shall hold no full-time office for which compensation is paid from District of Columbia funds, and shall serve without compensation. Each term of appointment to the Citizens' Civil Defense Advisory Council shall be for a period of one year, provided that the terms of appointment of approximately one-half of the members appointed shall expire on April 1 and approximately one-half shall expire on October 1 each year, regardless of the dates of appointment. Members may be reappointed at the discretion of the Commissioners. (Part I, amended by order dated May 31, 1955.)

PART II

Purpose.—The Citizens' Civil Defense Advisory Council is established for purposes of advising and consulting with the Board of Commissioners and the Director of Civil Defense on matters of basic civil defense policies, enlisting the active assistance of District of Columbia citizens in the development and implementation of an effective Civil Defense organization, and establishing public understanding and encouraging maximum community participation in civil defense and disaster relief programs.

PART III

Organization.—The Council shall determine its own organization, perfect its own rules of procedure, and designate its own officers, except that secretarial services shall be furnished by the Director of Civil Defense.

PART IV

Functions.—The functions of the Citizens' Civil Defense Advisory Council are to:

1. Participate in civil defense and disaster relief planning by making specific recommendations and suggestions to the Board of Commissioners and to the Director of Civil Defense regarding:

- Civil defense legislation and other legal matters.
- Development, modification, and revision of basic civil defense and disaster relief plans.
- Organization and staffing of the Civil Defense Volunteer program.
- Inter-governmental relationships, including mutual aid arrangements between the District of Columbia, on the one hand, and Federal agencies, adjoining States, and the Military District of Washington, on the other.
- Assignment of civil defense and major disaster duties to District of Columbia agencies and employees.
- Procurement, stockpiling, and storage of emergency supplies, materials, and equipment.

g. Use of privately-owned and District Government property, equipment, and facilities in the planning and in the operational phases of civil defense and disaster relief programs.

h. Financial problems arising in connection with existing or proposed civil defense and disaster relief plans and programs.

i. Provisions of instructor personnel to augment and to extend the training provided by the District Government's civil defense organization.

j. Mobilization and training of volunteer workers, including provision for facilities such as schools and classrooms.

k. Shelter program, including private and public facilities.

l. Establishment and maintenance of essential control communication and alert systems and public air raid warning systems.

m. Other matters pertaining to civil defense and disaster relief referred to the Council by the Board of Commissioners or the Director of Civil Defense.

2. Provide continuous liaison with citizen and civic associations, churches, schools, professional, business, veteran, and service organizations.

3. Develop cooperation between the District of Columbia Civil Defense organization and the aforementioned groups, through such means as dissemination of information and recruitment of volunteer workers, in order to establish public understanding and acceptance of the importance of civil defense and to stimulate and to encourage maximum community participation in the civil defense and disaster relief programs.

PART V

Cooperation of District officials.—Officials and employees of the District of Columbia Government shall assist and cooperate with the Citizens' Civil Defense Advisory Council whenever requested to do so by the Council Chairman.

PART VI

Abolition of existing organization.—Coincident with the establishment of the Citizens' Civil Defense Advisory Council, the existing Civil Defense Advisory Council is abolished. All property and records of the existing Council are transferred to the administrative custody of the Director of Civil Defense.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 46.—METROPOLITAN POLICE DEPARTMENT

Reorg. Ord. No. 46, G. F. No. 4-100, June 26, 1953, ordered that:

PART I

Metropolitan Police Department.—There is hereby established under the direction and control of the President of the Board of Commissioners, a Metropolitan Police Department, headed by the Chief of Police. The Chief of Police shall have full authority over such Department, including:

1. The power to re-delegate to other officials of the Department such of the powers herein delegated as, in his judgment, may be warranted in the interest of the prevention and detection of crime and of efficiency and good administration.

2. Expenditure of appropriated and other funds, regardless of their source, which are provided for carrying out the functions of the Metropolitan Police Department and its constituent units.

3. Supervision and control over equipment and property, both personal and real, including lost, abandoned, and confiscated private property in the custody of the Department.

This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Metropolitan Police Department is established for the purpose of providing maximum protection of life and property in the community through the prevention and detection of crime and the enforcement of all local and locally applicable statutes, regulations, and ordinances. In the performance of its municipal functions the Department shall cooperate with Federal police agencies in the enforcement of Federal laws.

PART III

Organization.—There are hereby established in the Metropolitan Police Department the following organizational components:

1. Office of the Chief of Police.
2. Patrol Division.
3. Detective Division.
4. Morals Division.
5. Traffic Division.
6. Youth Aid Division.
7. Police Personnel Office.
8. Chief Clerk's Section.
9. Training Section.
10. Special Services Section.
11. Uniforms and Equipment Section.

(Amended by order dated May 17, 1955, by insertion of "Youth Aid Division" and renumbering of remaining components.)

PART IV

Functions.—*a. Office of the Chief of Police:*

1. Develops and proposes major programs and policies on police matters to the Board of Commissioners.
 2. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all police programs, services, and operations of the District of Columbia.
 3. Advises and assists the President of the Board of Commissioners on District of Columbia matters relating to police services.
 4. Presents and justifies departmental budget estimates.
 5. Maintains discipline within the Department.
- b. Patrol Division:*
1. Prevents crime by suppression of criminal activity.
 2. Apprehends criminals and persons suspected of crime.
 3. Preserves the peace.
 4. Protects life and property.
 5. Controls public gatherings.
 6. Notifies owners of any real property in the District of Columbia to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, the abatement or correction of such nuisance or condition said owners are by law or by said regulation chargeable. After service of notice, if the owner shall fail or refuse to abate such nuisance or to correct such condition, refers the case to the Office of the Corporation Counsel for prosecution. If the owner of such property cannot be found, notifies either the Director of Licenses and Inspections or the Director of Public Health, as the character of the nuisance or condition requires, who shall indicate further action necessary to abate the nuisance or to correct the illegal condition cited. (Added by Order No. 56-214, dated Jan. 31, 1956.)

c. Detective Division:

1. Makes investigations to obtain such information as will assist in the prevention of crime and the identification, apprehension, and conviction of criminals.
2. Apprehends criminals and persons suspected of crime.
3. Photographs, measures, and fingerprints persons arrested.
4. Photographs scenes of fatalities, other than traffic accidents, which may be required for coroner's inquests and possible evidence in court.
5. Obtains descriptions, photographs, and, when considered advisable, fingerprints of unknown dead for the purpose of identification.

6. Copies photographs of persons wanted or reported missing.

7. Photographs fraudulent checks and other documents for evidence or future reference.

8. Maintains index of all photographs and correspondence relating thereto.

9. Classifies and files all fingerprints.

10. Forwards to other jurisdictions photographs and fingerprints of persons thought to be wanted or thought to have criminal records elsewhere.

11. Makes careful search of all photographs and fingerprints received from other jurisdictions and furnishes authorities in such jurisdictions with any information which may be found.

12. Traces and recovers lost and stolen property.

13. Supervises and inspects pawnshops and establishments of dealers in secondhand personal property.

d. Morals Division:

1. Makes investigations to obtain such information as will assist in the prevention of crimes and the enforcement of laws relating to gambling, prostitution, narcotics, liquor and other vice operations conducted for profit.

2. Collaborates with the Patrol Division in the planning and direction of its activities.

3. Apprehends criminals and persons suspected of crime.

e. Traffic Division:

1. Controls vehicular traffic and enforces traffic laws and regulations.

2. Apprehends criminals and persons suspected of crime.

3. Investigates accidents.

4. Conducts the Traffic Violators School.

5. Public vehicle unit.

Enforces all Police, Public Utilities Commission and traffic regulations relative to the operation of public vehicles, including taxicabs, sightseeing vehicles, ambulances, and funeral cars. Investigates the character of all applicants, and investigates complaints against licensees with respect to the operation of public vehicles. Responsible for (1) the review of applicants records to assure conformance with standards established by the Board of Commissioners; (2) examination of applicants to assure their knowledge of the city, rules, regulations, and rates and zones; (3) the issuance of public vehicle operator licenses; (4) the maintenance of all records of applicants and licensees; and (5) the performance of all related administrative functions. Performs all of the functions mentioned herein in connection with the issuance of licenses for public guides. (This section was added by order dated Oct. 20, 1955, effective Dec. 1, 1955.)

f. Youth Aid Division:

1. Conducts investigations to obtain such information as will assist in the prevention of the delinquency of juveniles and the enforcement of laws relating to juveniles.

2. Processes through to disposition all juvenile matters coming to the attention of the police.

3. Maintains complete records relating to juvenile matters.

4. Coordinates a preventive program within the Department concerning juveniles.

5. Cooperates with the Department of Work Permits and School Attendance in the investigation of child labor and compulsory education laws. (Amended by order dated May 17, 1955, by insertion of above new subdivision entitled "Youth Aid Division" to follow subdivision e (5) and relettering the remaining subdivisions.)

g. Police Personnel Office:

1. Administers, under the immediate supervision of the Executive Officer, all police personnel matters for the Department, excepting training.

2. Maintains police personnel records.

h. Chief Clerk's Section:

1. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, budgetary, statistical, civilian personnel, and payroll services.

2. Collaborates and maintains liaison with the staff offices of the Department of General Administration, and with the divisions of the Police Department in administrative programs.

3. Performs custodial duties in connection with private property which has been lost, stolen, or confiscated by the Department.

4. Prepares all statistical reports requested by the Federal Bureau of Identification, National Safety Council, and other agencies.

i. Training Section:

1. Plans curricula of, and conducts training courses, for police officers.

2. Conducts the Police Academy and Training School.

3. Supervises the operation of the Pistol Range.

j. Special Services Section:

1. Plans civil defense program for the Department, and supervises volunteer police civil defense corps.

2. Represents Chief of Police in civil defense activities.

3. Supervises the maintenance, operation, and repair of the Police communication system, including the radio station.

4. Supervises the operations of the Communication and Records Bureau.

5. Maintains liaison with United States and District of Columbia Courts.

6. Investigates complaints of improper procedure or actions by members of the Police Department; prepares reports consisting of factual information and data regarding such complaints for use by Chief of Police and Executive Officer.

k. Uniforms and Equipment Section:

1. Prepares specifications for, stores, receives, issues and accounts for police uniforms and equipment.

2. Maintains and operates structures and grounds of the Police Department.

3. Operates the repair and service shop.

PART V

Powers and authorities.—All powers and authorities vested by law in the officers and members of the existing Metropolitan Police Department, including the officers and members of the existing Metropolitan police force, shall be vested in the officers and members of the new Metropolitan Police Department.

PART VI

Transfers to new department.—a. All functions under the existing Metropolitan Police Department which includes the Metropolitan police force, including the duties, powers, and authorities of all officers and members of said Department and Force and the civilian employees assigned thereto, are transferred to the new Metropolitan Police Department.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions transferred in (a) of this Part are transferred to the Metropolitan Police Department.

PART VII

Abolition of existing agencies.—In order to fulfill the legal requirements of Reorganization Plan No. 5 and at the same time, to provide for the continuous performance of functions presently delegated to the Chief of Police until August 1, 1953, when all other provisions of this Order automatically take effect the existing Metropolitan Police Department, including the existing Metropolitan police force, is hereby abolished, effective June 26, 1953, and immediately re-created as previously constituted, including all functions, duties, powers, and authorities vested therein.

PART VIII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with provisions of this Order are, to the extent of such conflict, hereby repealed.

PART IX

Effective date.—The provisions of this Order, with the exception of Part VII herein, shall become effective on and after August 1, 1953.

REORGANIZATION ORDER NO. 47.—BOARD OF POLICE AND FIRE SURGEONS

Reorg. Ord. No. 47, G. F. No. 4-122, June 26, 1953, ordered that:

PART I

Board of Police and Fire Surgeons.—a. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto.

b. The reconstituted Board shall be organizationally a part of the Fire Department in order that the Fire Department shall continue to provide necessary administrative and budgetary services.

c. Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Commissioners, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon certification of the Board of Police and Fire Surgeons setting forth the necessity for such services or treatment and the nature of the injury of disease which rendered the same necessary. As used in this paragraph, the word "member" has the same meaning as such term is defined in section 4-521 of the D.C. Code. (Sec. c. was added by order No. 58-1736, on Oct. 16, 1958.)

PART II

Transfers to new board.—There are transferred to the Board of Police and Fire Surgeons all positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions referred to in Part I (a) herein.

PART III

Abolition of the existing board.—The existing Board of Police and Fire Surgeons, including the office of the chairman thereof, is abolished.

PART IV

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 48.—POLICE TRIAL AND REVIEW BOARDS

Reorg. Ord. No. 48, G. F. No. 4-122.1, June 26, 1953, ordered that:

PART I

Police Trial and Review Boards.—a. There are established in the Government of the District of Columbia the following Police Trial and Review Boards:

(1) **Regular Police Trial Board** consisting of three members of the Police Department with the rank of Captain or higher.

(2) **Special Police Trial Board** consisting of two members of the Police Department with the rank of Captain or higher, one of whom shall be designated as Chairman; and one member of the bar of the United States District Court for the District of Columbia.

(3) **Complaint Review Board** consisting of three adult residents of the District of Columbia who are citizens of the United States and qualified attorneys.

b. All authorities and powers exercised by members of the aforementioned boards shall be in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Police Trial and Review Boards are established for the purpose of insuring fair and impartial trials and reviews in cases involving infractions of discipline or improper procedure by members of the Police Department, arising from reports made by officials of the Department, or sworn complaints of persons other than members of the Department which may be referred to such Boards by the Commissioners or the Chief of Police.

PART III

Selection of members.—Members of the Police Trial and Review Board shall be selected as follows:

(a) The Chief of Police is authorized to select Police Department members of all such boards.

(b) The attorney member of the Special Police Trial Board shall be selected from two panels of lawyers designated by the president of the Bar Association of the District of Columbia and the Washington Bar Association of the District of Columbia, in accordance with the procedures set forth in Chapter XXXV of the Manual of the Metropolitan Police Department, except that no attorney shall be appointed to this Board who is an employee of the District of Columbia.

(c) Members of the Complaint Review Board shall be appointed by the Board of Commissioners, provided that no member so appointed shall be an employee of the District of Columbia.

PART IV

Designation of chairman and alternate chairman.—a. The Chairman and Alternate Chairman of the Regular Police Trial Board shall be designated by the Chief of Police from among the members of such Board.

b. The Chairman and Alternate Chairman of the Special Police Trial Board and the Complaint Review Board shall be designated by the Board of Commissioners from among the members of such Board.

PART V

Functions.—The functions of the Police Trial and Review Boards shall be as follows:

a. *The Regular Police Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from reports made by officials of the Police Department which may be referred to it by the Commissioners or the Chief of Police.

b. *The Special Police Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from sworn complaints of persons other than members of the Police Department which may be referred to it by the Commissioners or the Chief of Police.

c. *The Complaint Review Board* shall be responsible for reviewing sworn complaints made by persons other than members of the Police Department which may be referred to it by the Chief of Police; and, in connection with such complaints, said Board may recommend that the complaint be ignored or that charges be preferred against the accused.

PART VI

Rules of procedure.—The Police Trial and Review Boards established herein shall be conducted in accordance with the provisions and requirements contained in Chapter XXXV of the Manual of the Metropolitan Police Department, including procedures followed, recommendations made, and actions taken by said Boards.

PART VII

Subpoena powers.—The Police Trial and Review Boards are authorized and empowered to summon any person before it to give testimony, under oath or affirmation, and/or to produce all books, records, papers, or documents before said Boards. Such subpoenas shall be issued in accordance with existing laws, rules, and regulations.

PART VIII

Abolition of existing boards.—a. All property and records of the existing Police Trial and Review Boards are transferred to the administrative custody of the Police Department.

b. The existing Police Trial and Review Boards, including the offices of the Chairmen thereof, are abolished.

PART IX

Conflicting orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 49.—OFFICE OF CIVIL DEFENSE

Reorg. Ord. No. 49, G. F. No. 4-010, June 26, 1953, as amended November 10, 1953 ordered that:

PART I

Office of Civil Defense.—There is hereby established under the supervision and control of a Commissioner, an Office of Civil Defense, headed by a Director, who shall also be known as the Coordinator for Natural Disaster Relief. The Director shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Office such of the powers herein delegated, as in his judgment may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall extend to the appointment and replacement of personnel within volunteer Civil Defense Services and shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Definitions.—a. "Enemy attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the District of Columbia in any manner by sabotage or by the use of bombs, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

b. "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or any catastrophe other than enemy attack in any part of the District of Columbia which, in the determination of the Board of Commissioners, or, in the absence or unavailability of the Board of Commissioners, the ranking member thereof who is available, or, in the absence or unavailability of all the Commissioners, the Director of Civil Defense, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Civil Defense organization of the District of Columbia.

c. The term "disaster" when used alone herein shall be understood to include both the terms "enemy attack" and "major disaster."

PART III

Purpose and scope.—a. The Office of Civil Defense is established for the purpose of providing an effective planning and operational organization to minimize the effects upon the citizens of the District of Columbia of an enemy attack or major disaster and to deal with emergency conditions which may be created by such attack or disaster.

b. The total resources and personnel of the District of Columbia Government shall be made available in the event of disaster in order to minimize loss of life, protect property, relieve suffering, and continue the essential functions of that Government. All departments, offices, and agencies, including all officials and employees assigned thereto, whether or not they previously have been assigned to specific civil defense duty, shall assist in this mission under the direction of the Director of Civil Defense and officials designated in Part VI herein.

c. Upon an alert of impending enemy attack, upon attack without warning, or when directed in the event of major disaster, all Civil Defense Services shall be alerted and the Civil Defense Disaster Plan shall be placed in operation.

d. The ranking member of the Board of Commissioners who is available and able to do so shall assume command of disaster operations and shall retain command as long as he is available and able. Such member is delegated full authority to act in behalf of the Board of Commissioners, subject to all applicable laws, rules and regulations.

e. The Director of Civil Defense Supply Service is authorized to exercise the powers vested in the Board of Commissioners by subsection 9 (c) of the Act of December 26, 1941 (D. C. Code, Sec. 6-1009 (c), 1951 ed.). (Par (e) added by order No. 58-1390, Aug. 26, 1958.)

PART IV

Organization.—There are hereby established in the Office of Civil Defense the following organizational components:

1. Office of the Director
2. Administrative Division
3. Attack Warning Division
4. Operating Services hereinafter listed and such other Services as the Commissioners may direct.

PART V

Functions.—a. *Office of the Director.*

1. Develops and proposes plans and major policies regarding civil defense and major disaster protective and relief measures to the Board of Commissioners.

2. Coordinates civil defense and disaster plans and programs within the District of Columbia and integrates these plans with Federal Government, State, and local jurisdictions.

3. Advises heads of District of Columbia Departments of civil defense requirements for their respective agencies and assists in the preparation of detailed operating procedures for their respective services or agencies.

4. Exercises administrative and operational control over the Warden Service and other volunteer civil defense Services not functioning within other District of Columbia agencies.

5. Maintains liaison and represents the Commissioner in charge of the Office of Civil Defense with Federal and State civil defense agencies and the Military District of Washington; deals directly with private enterprise, business groups, firms, and individuals on matters pertaining to civil defense or disaster problems.

6. Develops, presents, and justifies the Office of Civil Defense budget.

7. Recommends civil defense legislation to the Board of Commissioners.

8. Institutes training programs for civil defense volunteers, public education, and information programs; distributes educational and other civil defense materials; and coordinates training programs in the Operating Services.

9. Conducts such Civil Defense exercises as may be necessary to prepare for an emergency, with the approval of the Board of Commissioners.

10. Maintains the Command Center and Alternate Command Center as the base for disaster relief operations.

11. Serves as Executive Director for disaster operations under the ranking member of the Board of Commissioners who is available and able to assume command during a disaster. When no member of the Board of Commissioners is available or able to assume command of disaster operations, as provided in Part III-D herein, assumes full command of such operations, subject to all applicable laws, rules, and regulations.

12. Serves as Coordinator for Natural Disaster Relief for the District of Columbia during major natural disaster, and maintains liaison for the Board of Commissioners with the Federal Civil Defense Administration.

b. *Administrative Division.*

1. Plans, directs, coordinates, and administers the Office of Civil Defense accounting, procurement, administrative and personnel services and management improvement activities.

2. Prepares administrative programs and plans, including budget requests and justifications and periodic and other required reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the operating Civil Defense Services on all administrative matters.

4. Provides secretarial and other administrative assistance to the Citizens' Civil Defense Advisory Council.

c. *Attack Warning Division.*

1. Maintains and operates the air raid warning and other civil defense communications systems.

2. Assists the Deputy Director for Communications Services in developing operational plans for civil defense communications and in conducting communications training.

3. Assists the Deputy Director for Communications Services in coordinating public and private communication facilities within the District of Columbia and with nearby civil defense authorities.

PART VI

Operating services.—a. The following District of Columbia agencies, by reason of their normal function or their specialized qualifications, will form the nucleus for the organization, training, administration, and supervision of the Civil Defense Services listed below and designated as heads of these Civil Defense Services:

<i>D. C. Department or agency</i>	<i>Civil Defense Service and title of head</i>
Department of Public Health.	Deputy Director, Medical and Health Services.
Department of Sanitary Engineering.	Deputy Director, Engineering Services.
Department of Highways.	Coordinator, Rescue and Repair Services.
a. Electrical Division.	Deputy Director for Communications.
D. C. Fire Department.	Deputy Director, Fire Services.
Metropolitan Police Department.	Deputy Director, Police Services.
Department of Public Welfare.	Deputy Director, Emergency Welfare Services.
Department of Buildings and Grounds.	Coordinator, Building Warden Services, D. C. Buildings.

b. The heads of the District agencies enumerated above, and such other District agencies as the Commissioners may from time to time designate, shall be responsible, in their civil defense capacity, to the Board of Commissioners for:

1. Developing and executing all civil defense policies and plans approved by the Board of Commissioners which relate to their Services. In implementing and executing these approved policies, they are authorized and directed to utilize the personnel, resources, and facilities of their agencies, and to redelegate within their agencies such powers as, in their judgment, are necessary to accomplish this mission.

2. Coordinating detailed operating plans for their Service with the Office of Civil Defense.

3. Storing, safeguarding, maintaining, distributing, and utilizing civil defense supplies and equipment intended for disaster use by their Service.

4. Augmenting the personnel and facilities of their organization for effective disaster operation by recruitment and training of volunteers and utilization of all public and private facilities which may be available.

5. Establishing such command and communication channels within their Services as will ensure effective control of disaster relief operations.

6. Taking immediate steps, upon warning of impending attack, attack without warning, or when directed in the event of major disaster, to mobilize their Services and reporting immediately to the Civil Defense Command Center to assume command of disaster relief operations for their Service. (The Police and Fire Chiefs each may designate a member of his department with delegated authority to act in his behalf, to report to the Command Center.)

c. All volunteer services now established within the District Civil Defense Program are hereby re-established under the Director of the Office of Civil Defense.

PART VII

Transfers to new office.—a. All functions and positions under the existing Office of Civil Defense including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the Office of Civil Defense.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions and positions transferred are hereby transferred to the Office of Civil Defense.

PART VIII

Abolition of existing office.—The existing Office of Civil Defense, including the office of the head thereof, is regulations.

PART IX

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order becomes effective November 10, 1953.

REORGANIZATION ORDER NO. 50.—OFFICE OF THE CORPORATION COUNSEL

(Reorganization order No. 50 dated June 26, 1953, as amended, was repealed and replaced as follows by order No. 55-1029 dated June 6, 1955.)

PART I

Office of the Corporation Counsel.—The Office of the Corporation Counsel, established by Reorganization Order No. 50, dated June 26, 1953, as amended, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto, shall continue under the direction and control of the Board of Commissioners. The Corporation Counsel shall continue to have full authority over such office and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the office such of the powers heretofore or hereafter delegated as, in his judgment, are warranted in the interest of efficiency and good administration. All authority vested in the Corporation Counsel shall be exercised in accordance with applicable laws, rules, and abolished.

PART II

Organization.—The Office of the Corporation Counsel shall be comprised of the following organizational components, responsible for the performance of the functions outlined:

a. *Office of the Corporation Counsel and Principal Assistant Corporation Counsel:*

(a) *Corporation Counsel and Principal Assistant Corporation Counsel.*—Is attorney for and chief law officer of the District of Columbia Government and has charge of all of its law business. Through his professional staff conducts prosecution of all cases, including criminal, instituted by it and defense of all suits against the District of Columbia, its officers, employees, and agents arising out of performance of official duties.

Furnishes legal advice to the Commissioners and the several departments and agencies of the District of Columbia and upon request of said Commissioners renders written opinions to them. Such opinions, in the absence of specific action by the Board of Commissioners to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law, to be followed by all District officers and employees in the performance of their official duties. (Par. amended Mar. 13, 1958, order No. 58-379.)

Is statutory General Counsel of the Public Utilities Commission.

Supervises the staff of the Office of the Corporation Counsel and the administrative services necessary for the internal operations of the Office.

(b) *Administrative Assistant.*—Performs various administrative and clerical services necessary to the operations and activities of the Office of the Corporation Counsel, including personnel administration, development and implementation of improved management techniques and methods, maintenance of central records and files, preparation of the annual budget estimates, custodian of the library facilities, procurement of law books, periodicals, and supply and equipment items, the maintenance of accounts, and the preparation of regular and special reports.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

b. *Special Assistant Corporation Counsel for Public Utilities.*—Under the direction of the Corporation Counsel acts as General Counsel for the Public Utilities Commission.

Represents and appears for the Public Utilities Commission in all legal, administrative, and procedural matters affecting the operation and regulation of public utilities in the District of Columbia.

Advises the members of the Public Utilities Commission on legal, technical, and procedural matters relating to their duties and powers.

Reviews and prepares reports upon proposed legislation affecting public utilities operating in the District of Columbia.

Advises the Board of Commissioners and department and office heads on matters relating to public utilities.

c. *Legislation and Opinions Division.*—Drafts legislation and prepares letters, comments, and reports, relating to legislation, both pending and proposed, on all subjects affecting or concerning the District of Columbia, excepting matters of taxation and appropriations.

Reviews proposed amendments to municipal ordinances and regulations.

Prepares formal legal opinions for District departments and agencies.

Maintains liaison with members and committees of the Congress.

Performs research on legal matters relating to various aspects of the District of Columbia Government.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

d. *Civil Proceedings Division.*—Handles all civil actions in which the District of Columbia, its officers, employees, agencies, boards, or commissions are involved, except those hereby assigned to other divisions of the Office. (Par. amended Feb. 4, 1958, order No. 58-196.)

Handles the investigation of personal injury and property damage claims by and against the District; prepares formal opinions for signature of the Corporation Counsel and submission to the Commissioners on the settlement or denial thereof and prepares for trial and tries court action resulting from denial thereof.

Institutes suits to establish rights of, and collects monies due, the District of Columbia Government, including so-called "Phipps Act" cases.

Prepares and tries cases involving the acquisition of land for streets, alleys, parks, sites for schools, police and fire stations, libraries, and other municipal uses.

(Pars. 5 and 6 stricken by order No. 58-196, February 4, 1958.)

Assists in preparing drafts of and comments and reports on legislation, both pending and proposed, and prepares opinions on matters likely to result in damage suits.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

e. *Taxation Division.*—Prepares and tries all tax cases, including appeals, for the District of Columbia, in the Tax Court and in the Courts of the District of Columbia.

Performs special legal duties related to tax legislation and tax questions.

Advises the Board of Commissioners and department and office heads on all tax questions and matters.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or Principal Assistant Corporation Counsel.

f. *Law Enforcement Division.*—Prosecutes in the Municipal Court, Criminal Division, all violations of municipal regulations, and other violations of Acts of Congress under which the Corporation Counsel is named as prosecutor.

(Pars. 2 to 5, stricken by order No. 58-196, February 4, 1958.)

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

g. *Special Assignments Division.*—Performs all legal work, except litigation in the courts, in connection with

the District of Columbia Government personnel matters and in connection with contractual relationships of the District Government with the Federal and State Governments and agencies thereof, as well as with private persons and organizations.

Furnishes legal advice to the Director of the Department of Occupations and Professions and members of the various Boards, Commissions and Committees in said Department on matters relating to their duties, powers, and activities, including the trial of matters arising before said Boards, Commissions and Committees.

Tries cases arising before Police and Fire Trial Boards.

Collaborates with the Civil Proceedings Division in court litigation arising out of any of the foregoing.

Prepares formal written opinions on the foregoing matters.

Assists in preparing legislation, and comments and reports on legislation both pending and proposed, in relation to any of the foregoing matters.

Performs such additional duties, in the nature of special assignments, and otherwise, as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

h. Appellate Division.—Prepares, briefs and argues cases which are appealed to the Municipal Court of Appeals, the United States Court of Appeals, and the Supreme Court of the United States, resulting from cases tried on the trial court or administrative agency level by staff members of the Civil Proceedings, Law Enforcement and Special Assignments Divisions, as well as administrative agency actions reviewed by the United States District Court. (Order dated, Aug. 30, 1956, No. 56-1776, deleted the former 7th par. of subdivision d and added new subdivision h above set out.)

1. Domestic Relations and Collections Division.—Prepares, briefs, and argues cases arising under the "Act to improve and extend, through reciprocal legislation, the enforcement of duties of support in the District of Columbia," approved July 10, 1957.

Prepares and tries cases, and performs related legal duties, in connection with the following: wards of the Department of Public Welfare; recoupment of monies paid out by that Department by way of public assistance; matters of mental health; the District Training School; and the collection of maintenance costs for insane and feeble-minded persons committed at District expense to District institutions. Investigates and takes necessary action to collect accounts of mental health patients and District General Hospital patients.

Performs legal work involved in representing the interests of the District of Columbia in probate and escheat cases.

Approves for filing, prepares for trial, and tries all cases within the jurisdiction of the Juvenile Court; assists the Court in the preparation and presentation of evidence in all hearings before the Juvenile Court to determine delinquency, dependency, or neglect of minors.

Advises and assists police officers, other employees of the District of Columbia Government, and others on matters involving juveniles and questions of domestic relations.

Advises staff members of the Juvenile Court on all legal matters arising out of their official duties.

Assists in preparing legislation pertaining to Juvenile Court matters. (Part II i added by order No. 58-196, Feb. 4, 1958.)

PART III

Delegation of authority to settle claims and to consent to fees and commissions.—a. Authority is hereby delegated to the Corporation Counsel to compromise and settle claims and suits which are:

1. Instituted against the District of Columbia up to and including \$1,000.

2. Instituted on behalf of the District of Columbia by reducing the amount of such claim or suit by an amount not exceeding \$1,000. (Par. amended Mar. 13, 1958, order No. 58-379.)

b. Authority is hereby further delegated to the Corporation Counsel, in any case before the Courts in which the District of Columbia has any interest, direct

or indirect, to consent or object to Court orders authorizing expenditures or disbursement by any fiduciary, and to consent or object to fees and commissions. Notwithstanding the above, the Corporation Counsel may, in any instance deemed advisable, seek specific authorization of the Commissioners prior to consenting or objecting to any such fee, commission, expenditure or disbursement.

c. That the Corporation Counsel and such of his assistants as he may designate in writing are hereby authorized to execute in the name of the District of Columbia any release in connection with the settlement of any claim of the District of Columbia in the following cases:

1. Where the full amount of the claim as it appears on the books of the Accounting Office has been paid; or

2. Where the full amount set forth in the original demand for payment has been paid; or

3. Where the full amount of any settlement or compromise as approved by the Commissioners has been paid; or

4. Where damaged property of the District of Columbia has been satisfactorily repaired at the expense of the party responsible for such damage. (Added by Order No. 56-320, dated Feb. 10, 1956, and amended by Order No. 56-2102, dated Oct. 18, 1956.)

REORGANIZATION ORDER NO. 51.—OFFICE OF THE CORONER

Reorg. Ord. No. 51, G. F. No. 6-030, June 29, 1953, as amended July 17, 1953, ordered that:

PART I

Office of the Coroner.—There is established, under the direction and control of a Commissioner, an Office of the Coroner, headed by a Coroner. The Coroner shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Office of the Coroner such powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration, and which are not required by law to be performed by the Coroner.

All authority vested in the Coroner shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Functions.—The Office of the Coroner shall perform such functions as are now or as may be assigned by provisions of the District of Columbia Code.

PART III

Transfers.—a. There are hereby transferred to the new Office of the Coroner all functions and positions, including all duties, powers, and authorities of all officers and employees of the existing Office of the Coroner, with exceptions as noted in (b) of this Part.

b. All laboratory functions performed by the existing Office of the Coroner are transferred to the Department of Public Health, including the powers, duties, and authorities of employees engaged therein.

c. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in (a) of this Part, are hereby transferred to the new Office of the Coroner.

d. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in (b) of this Part, are hereby transferred to the Department of Public Health.

PART IV

Abolition of existing office.—a. In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated to the Coroner until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Office of the Coroner, including the office of the head thereof, is hereby abolished effective June 29, 1953, and immediately re-created as previously constituted, including all func-

tions, duties, powers, and authorities vested therein. Coincident with the re-creation of said office, the position of Coroner, as head thereof, is also re-established and the present Coroner re-appointed thereto.

b. The re-created Office of the Coroner, including the office of the head thereof, shall be abolished automatically on August 15, 1953.

PART V

Effective date.—The provisions of this Order, with the exception of Part IV (a) herein, shall become effective on and after August 15, 1953.

REORGANIZATION ORDER NO. 52, AMENDED.—DISTRICT OF COLUMBIA POUND

APRIL 3, 1958.

Order No. 58-498.

Ordered: That Reorganization Order No. 52, dated June 30, 1953, as amended, relative to the District of Columbia Pound, is hereby further amended as follows:

PART I

District of Columbia Pound.—There are hereby transferred to the Department of Public Health under the direction and control of the Director of Public Health, all functions of the District of Columbia Pound of the Metropolitan Police Department, including all positions, personnel, property and records relating thereto.

PART II

Effective date.—This Order shall become effective upon the approval by Congress, of the transfer of funds, from the Metropolitan Police Department to the Department of Public Health, for the operation and upkeep of the District of Columbia Pound. (Original Reorg. Order No. 52, dated June 30, 1953, was replaced in its entirety by order above set out.)

REORGANIZATION ORDER NO. 53.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

(See Org. Order No. 122.)

REORGANIZATION ORDER NO. 54.—DEPARTMENT OF VEHICLES AND TRAFFIC

(Parts I, II, III, IV, V, VI, VII, VIII, IX, X, and XI of Reorganization Order No. 54, as amended, were repealed by Organization Orders dated May 17, 1955, and numbered 105, 106, 107, and 108 and replaced as follows:)

Organization Order No. 105, amended.—Department of Motor Vehicles.

SEPTEMBER 9, 1958.

Order No. 58-1452.

Ordered: That Organization Order No. 105, dated May 17, 1955, as amended, relative to the Department of Vehicles and Traffic, is hereby repealed in its entirety and replaced Motor Vehicles.

PART I

Department of Motor Vehicles.—The Department of Vehicles and Traffic established by Reorganization Order No. 54, dated June 30, 1953, as amended, continued by Organization Order No. 105, dated May 17, 1955, as amended, and redesignated as the Department of Motor Vehicles by Commissioners' Order No. 58-919, dated June 10, 1958, shall continue under the direction and control of the Engineer Commissioner.

PART II

Purpose.—The Department of Motor Vehicles is established to provide, under the direction and control of the Engineer Commissioner, an organization of personnel, resources and facilities designed to administer, for the Board of Commissioners, the motor vehicle laws and regulations, including related traffic safety education and public support programs of the District of Columbia.

PART III

Director, Department of Motor Vehicles.—The Director, Department of Motor Vehicles, as head of the Department and, where so designated in municipal regulations, as agent of the Commissioners of the District

of Columbia, is responsible for the administration of the motor vehicle laws and regulations of the District of Columbia including, but not limited to, the District of Columbia Traffic Act, 1925, as amended, the Owners' Financial Responsibility Act of the District of Columbia, as amended, the Motor Vehicle Safety Responsibility Act of the District of Columbia, as amended, and related regulations, and for the administration of traffic safety education and public support programs related to such laws and regulations. The Director shall have authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to delegate authority and assign responsibility to officials and personnel of the Department in such degree as, in his judgment, is necessary to establish and maintain efficiency and good administration. All authority vested in the Director shall be exercised in accordance with applicable laws, rules and regulations.

PART IV

Organization and functions.—The Department of Motor Vehicles shall be comprised of the following organizational components, in which responsible officials and personnel assigned thereto shall perform such of the functions described herein as may be delegated by the Director:

a. Office of the Director:

1. Develops, and proposes to the Board of Commissioners, major programs and policies relating to the titling, registration, inspection and operation of motor vehicles and trailers; the issuance, renewal, suspension and revocation of permits to operate vehicles and the suspension and revocation of operating privileges; the administration of financial responsibility laws of the District of Columbia; and traffic safety education and public support activities.

2. Plans, prescribes departmental policies for, directs, coordinates, evaluates, controls, and is responsible for administration of all programs relating to the execution of District of Columbia motor vehicle laws and regulations, and traffic safety education and public support programs; proposes to the Board of Commissioners related new and amended legislation and regulations.

3. Develops, presents and justifies the Department's budget estimates.

4. Reviews, and approves or disapproves, recommendations developed within the Department for legislation, regulations and major policies, and transmits same to the Board of Commissioners.

5. Advises and assists the Engineer Commissioner on all matters concerning the administration of District of Columbia motor vehicle laws and regulations and related traffic safety education and public support programs.

6. Represents the Engineer Commissioner in coordinating the planning and execution of District of Columbia motor vehicle administrative and related activities with those of other communities in the Washington metropolitan area and with departments and agencies of the Federal Government.

7. Represents the Commissioners of the District of Columbia in negotiating reciprocal relations with other jurisdictions, with authority to enter into reciprocal agreements and arrangements pursuant to the District of Columbia Traffic Act, 1925, as amended; administers such agreements and arrangements on behalf of the District of Columbia.

8. Reviews, and approves or disapproves, recommendations for suspension, revocation, or restoration of operators' permits and operating privileges in police and citizen complaints and other special cases referred to the Permit Control Division for consideration. In cases of requests for review of Orders issued by the Permit Control Division suspending or revoking operators' permits and operating privileges and motor vehicle driving instructors' licenses, reviews such cases and sustains, modifies or reverses such Orders. In cases of appeal from decisions of the Permit Control Division rejecting applications for operators' permits and for motor vehicle instructors' licenses from persons whose prior permits or licenses or operating privileges have been revoked, reviews such cases and sustains, modifies or reverses such decisions.

9. Administers the non-resident employer process service provisions of the District of Columbia Unemployment Compensation Act, as amended.

10. Provides witnesses to testify in the courts on matters related to the functions and operations of the Department.

b. Office of Business Administration:

1. Plans, directs, coordinates, administers and evaluates a comprehensive program for procedures and requirements covering the Department's budget, accounting, personnel, procurement, property and operational-audit activities, and other general administrative services such as microphotography, communications and records management.

2. Prepares, for the Director, administrative, fiscal and other programs and plans of operations, including budget requests and justifications; advises and assists the Director and other Department officials in developing, establishing and administering plans, programs and policies in accordance with administrative controls and requirements.

3. Advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies in all matters related to the functions of the Office.

4. Plans, develops and installs administrative systems and controls such as Department-wide reporting systems and procedures for departmental audit of operations and transactions. These systems and procedures provide measures and furnish data on program progress, employee performance and production, personnel requirements, operations and activity costs and other functional details.

5. Provides witnesses to testify in the courts on matters related to the functions and operations of the Office; acts for and represents the Department to other agencies, organizations and individuals in matters related to the functions of the Office; collaborates and maintains liaison with other officials and employees of the Department and with staff offices of the Department of General Administration and of other D. C. Government agencies in initiating and conducting surveys and studies and administering programs for management improvement.

6. Develops, establishes and maintains records and files required by law or regulations or which are necessary to the Office's operations; develops and prepares periodic and special statistical and other management reports related to the functions and operations of the Department.

c. Office of Traffic Safety Education:

1. In collaboration with other public safety organizations, initiates, plans, and develops safety education programs for pedestrians, drivers and schools.

2. Prepares, edits and distributes via press, radio, television and other media of communication, movie trailers, radio scripts, spot announcements, posters, hand-bills, news releases, manuals, and similar materials which serve to reduce traffic and pedestrian accidents.

3. Cooperates with other agencies and organizations in traffic safety education projects.

4. Compiles data and prepares District of Columbia entries in national safety activities.

5. Advises and assists the Director in developing programs and recommendations and justifications for traffic safety education and public support programs.

6. Furnishes secretarial assistance and acts as coordinating focal point of activities of Commissioners' Traffic Advisory Board and Metropolitan Area Traffic Council.

d. Permit Control Division:

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, and processes covering the examination, issuance, renewal and subsequent control of District of Columbia operators' permits and motor vehicle driving instructors' licenses.

2. Reviews applications and conducts examinations, and approves or disapproves, all applicants for new operators' permits and motor vehicle driving instructors' licenses; conducts oral and other special examinations for lingually and physically handicapped applicants; issues new operators' permits and motor vehicle driving instructors' licenses; reviews, and approves or disap-

proves, applications for renewals of operators' permits and motor vehicle driving instructors' licenses and, upon approval, issues such renewals.

3. Administers the "Point System," reviews and processes notices and other evidence of traffic violations; holds regular and special hearings and conferences related to recommendations and complaints from the public, the police, and other organizations concerning alleged unsafe physical or mental conditions or driving attitudes or abilities of District-licensed operators; holds hearings and conferences related to all individual driver violations of law and regulation; recommends or orders the suspension, revocation or restoration of operators' permits and operating privileges and motor vehicle driving instructors' licenses.

4. Maintains individual records of all District-licensed operators; maintains records on traffic regulation violators licensed by other jurisdictions; makes data from such records available to the police and other authorized agencies, organizations and individuals; cooperates with police and other organizations and individuals in locating and identifying drivers licensed by the District of Columbia.

5. Provides witnesses to testify in the courts on matters related to the functions and operations of the Division; acts for and represents the Department to other agencies, organizations and individuals in matters related to the Division's functions.

6. Advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies in all matters related to the Division's functions.

7. Develops, establishes and maintains records and files required by law or regulations or which are necessary to the Division's operations; develops and prepares periodic and special statistical and other operational reports related to the Division's functions.

8. Provides administrative services to the Board of Revocation and Review of Hackers' Identification Cards. (See Organization Order No. 107.)

9. Provides administrative assistance to the Motor Vehicle Owners' and Operators' Appeals and Review Board (See PART V hereof.)

e. Safety Responsibility Division:

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, processes and requirements necessary to execute the provisions of the Owners' Financial Responsibility Act and the Motor Vehicle Safety Responsibility Act.

2. Reviews accident reports and other evidence of injury or damage; evaluates personal injury and property damage resulting from reported accidents; determines and takes subsequent actions required under the provisions of the Safety Responsibility Act, including the suspension or restoration of operators' permits, operating privileges and vehicle registrations.

3. Determines amounts and records security deposits required and collected under the provisions of the Motor Vehicle Safety Responsibility Act; administers the disbursement and refund of such amounts.

4. Issues summonses to persons who fail to comply with provisions of the Motor Vehicle Safety Responsibility Act and, upon continued failure to comply, initiates issuance of warrants for arrest of such persons.

5. In all cases involving failure to satisfy judgments, conviction or forfeiture of bail for specified offenses and failure to maintain proof of financial responsibility for the future, as required by the provisions of the Owners' Financial Responsibility Act, as amended, or the Motor Vehicle Safety Responsibility Act, as amended, reviews the evidence submitted and the records available in the Department; and determines consequent official action to be taken under the applicable Act, and takes appropriate action such as the suspension or the restoration of operators' permits, operating privileges, or vehicle registrations.

6. Provides witnesses to testify in the courts on matters related to the functions and operations of the Division; acts for and represents the Department to other agencies, organizations and individuals on matters related to the Division's functions.

7. Advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies in all matters related to the Division's functions.

8. Develops, establishes and maintains records and files required by law or regulations or which are necessary to the Division's operations; develops and prepares periodic and special statistical and other operational reports related to the Division's functions.

f. Vehicle Control Division:

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, processes and requirements covering the titling and registration of, and issuance of owners' identification tags for motor vehicles and trailers, and, the inspection of such vehicles and trailers for mechanical safety.

2. Reviews, and approves or disapproves, applications and supporting evidence for, and issues District of Columbia Certificates of Title to motor vehicles and trailers; registers such vehicles and trailers and issues District of Columbia registration certificates and owners' identification tags; prior to delivery of each certificate of title, makes initial determination whether the issuance of such certificate is exempt from the Excise Tax imposed by the District of Columbia Traffic Act, 1925, as amended.

3. Reviews, and approves or disapproves, applications for registration of District of Columbia motor vehicle and trailer dealers; upon approval, registers such dealers; administers provisions of the traffic regulations related to such registrants.

4. Reviews, and approves or disapproves, applications for dealers' identification tags and for special-use certificates and identification tags; upon approval, issues such tags and certificates and dealers' registration cards.

5. Operates vehicle inspection stations; prepares schedules and notifies vehicle owners of inspection dates and requirements; makes periodic safety inspections of all vehicles registered in the District of Columbia, including government and "diplomatic" vehicles and vehicles licensed by the Public Utilities Commission of the District of Columbia, and approves, rejects, or condemns such vehicles; examines and tests, and approves or disapproves, motor vehicles equipped with special operating equipment and safety devices for handicapped drivers.

6. Cooperates with police and other government agencies in making special inspections of apparently unsafe vehicles.

7. Tests, or reviews test findings, and recommends to the Director approval or disapproval of vehicle lighting and safety devices proposed for sale in, or for use on vehicles registered by the District of Columbia.

8. Reviews applications for, and approves or disapproves, issuance of vehicle-registration reciprocity stickers to nonresidents, in accordance with established agreements between the District of Columbia and other jurisdictions.

9. Prepares and maintains individual records of all inspected vehicles, certificates of title issued, and vehicles registered; furnishes information from such records to the police and other government agencies, to legal, insurance and other organizations, and to members of the public having an interest therein; cooperates with the police and other authorized agencies and individuals in locating and identifying registered vehicles and owners.

10. Provides witnesses to testify in the courts on matters related to the functions and operations of the Division; acts for and represents the Department to other agencies, organizations and individuals on matters related to the Division's functions.

11. Advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies in all matters related to the Division's functions.

12. Develops, establishes and maintains records and files required by law or regulations or which are necessary to the Division's operations; develops and prepares periodic and special statistical and other operational reports related to the Division's functions.

(Subsecs. "f" and "g" were deleted and the above subsection "f" substituted in their place by order No. 59-827, on May 19, 1959.)

PART V

Appeals.—a. Pursuant to the provisions of the Motor Vehicle Safety Responsibility Act of the District of Columbia there is hereby established a Motor Vehicle Owners' and Operators' Appeals and Review Board which shall be composed by three regular members and an alternate member for each of said regular members, all employees of the District Government, to be appointed by the Board of Commissioners and subject to removal at the discretion of the Commissioners. No regular member or alternate member of such Board shall review any of his own orders or acts. The Commissioners shall designate one person to serve as Chairman from among the regular members; in the absence of said Chairman, that person's alternate shall serve as Chairman.

b. The Motor Vehicle Owners' and Operators' Appeals and Review Board shall hear, consider and decide upon all protests and appeals from any order or act of the Director, Department of Motor Vehicles, or of any designated agent of said Director which is issued or which is taken by said Director or by said agent in administering the Motor Vehicle Safety Responsibility Act of the District of Columbia. In every case, said Board shall make findings of fact and a conclusion, or conclusions, based upon the testimony of witnesses, or upon affidavits, or both, and upon personal inspection by the Board members if such inspection be made, and shall either set aside, modify, or affirm the action which is the basis of appeal or protest.

c. Administrative assistance to said Board shall be provided by the Permit Control Division, Department of Motor Vehicles.

d. Rules of procedure, including the development of methods of perfecting appeals to said Board and for insuring that appropriate records be kept, shall be formulated by said Board, in accordance with the provisions and requirements of the Motor Vehicle Safety Responsibility Act of the District of Columbia.

PART VI

Repeal of previous orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are, to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in anywise alter, amend or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VII

Effective date.—This order to be effective as of September 9, 1958.

Organization order No. 106.

PART V

MAY 17, 1955.

Motor Vehicle Parking Agency.—The Motor Vehicle Parking Agency, established by Reorganization Order No. 54, dated June 30, 1953, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner.

Said Agency shall continue to consist of twelve (12) members, namely, a representative of the Department of Commerce, to be designated by the Secretary thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; the Director of Vehicles and Traffic of the District of Columbia; and nine (9) other members to be designated by the Board of Commissioners of the District of Columbia.

The Motor Vehicle Parking Agency shall continue to be responsible for making recommendations to the Board of Commissioners, through the Engineer Commissioner, regarding ways and means of improving off-street parking facilities which will serve to insure, in the public interest, the free circulation of traffic in and through the streets of the District of Columbia. Further, said agency shall continue to function in a general advisory capacity on motor vehicle off-street parking problems referred to it by the Board of Commissioners.

There are established in the Motor Vehicle Parking Agency the following organizational components:

a. Office of the Executive Director:

1. Initiates, develops and proposes major policies on off-street parking matters to the Motor Vehicle Parking Agency and to the Engineer Commissioner.

2. Plans and coordinates the development of programs, plans, and projects to relieve the off-street parking situation.

3. Develops, presents, and justifies the agency budget estimates; administers business affairs of the agency.

4. Advises and assists the Engineer Commissioner on all District of Columbia matters relating to off-street parking, and represents the Engineer Commissioner and the Motor Vehicle Parking Agency in coordinating off-street parking problems, policies and programs with overall planning of other government, and nongovernment agencies.

5. Executes policies and programs approved by the Engineer Commissioner and the Board of Commissioners.

6. Collaborates with the Department of Vehicles and Traffic in the development of schematic layouts to facilitate movement of vehicles to and from off-street parking facilities.

7. As delegated, operates and maintains municipally owned parking facilities.

8. Supervises the Office of Research and Analysis.

b. Office of Research and Analysis:

1. Initiates, plans, and conducts research projects which serve to develop relationship of off-street parking facilities to business, property values, and urban and regional planning. Prepares analyses thereof and provides for publication.

2. Plans, develops, and conducts continuous surveys of supply, demand, and turnover of off-street parking facilities in the District of Columbia.

3. Develops and conducts studies of parking rates, and their relation to business and other property values.

4. Develops, maintains, and issues current information on the developments taking place in other communities relating to or affecting off-street parking, including periodic information regarding the parking situation in the District of Columbia.

The present members of the Motor Vehicle Parking Agency shall continue to serve for the terms of office as previously appointed.

Administrative assistance to said Agency shall continue to be provided by the Department of Vehicles and Traffic, as determined by the Engineer Commissioner.

(The provisions of this Order shall become effective on and after May 17, 1955.)

Organization Order No. 107—Amended Board of Revocation and Review of Hackers' Identification Cards (License).

PART VI

DECEMBER 18, 1958.

That Organization Order No. 107, dated May 17, 1955, as amended, relative to the Board of Revocation and Review of Hackers' Identification Cards, is hereby amended to read as follows:

That Part IV of Reorganization Order No. 54, dated June 30, 1953, as amended, is hereby repealed in its entirety and replaced as follows:

The Board of Revocation and Review of Hackers' Identification Cards, established by Reorganization Order No. 54, dated June 30, 1953, as amended, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner.

Said Board shall consist of five (5) members, namely:

(1) An employee in the Permit Control Division, Department of Motor Vehicles, as designated from time to time by the Director, Department of Motor Vehicles, who shall be Chairman;

(2) A member of the Commissioners' Traffic Advisory Board;

(3) An officer, assigned from time to time by the Chief of Police, from the Traffic Division, Metropolitan Police Department;

(4) A member of a panel of District Government officials appointed by the Board of Commissioners; and

(5) An assistant Corporation Counsel, as designated from time to time by the Corporation Counsel.

Three members shall constitute a quorum, one of whom shall be the Assistant Corporation Counsel member.

The functions and responsibilities of this Board shall be to:

(1) Exercise the power and authority vested in the Commissioners by subparagraph (e) of Paragraph 31 of Section 7 of an Act entitled "An Act making appropriations to provide for the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended (Sec. 47-2331, D.C. Code, 1951 ed.):

(a) To suspend and revoke licenses:

Provided, however, That whenever a member of the said Board shall dissent from a decision of the Board that any such license be suspended or revoked such decision shall not be final but the entire file shall be forwarded to the Commissioners for their action thereon without further hearing, unless the Commissioners shall otherwise direct, and the decision of the Commissioners shall be final.

(b) To grant or deny licenses, after hearing, on appeals by applicants from denials of such licenses by the Chief of Police: *Provided, however,* That whenever a member of the said Board shall dissent from a decision of the Board that any such license shall be denied such decision shall not be final but the entire file shall be forwarded to the Commissioners for their action thereon without further hearing, unless the Commissioners shall otherwise direct, and the decision of the Commissioners shall be final.

(2) Recommend to the Board of Commissioners changes in criteria or standards to be applied at hearings.

Necessary administrative services shall be provided the Board of Revocation and Review of Hackers' Identification Cards by the Department of Motor Vehicles.

The provisions of this Order shall become effective immediately.

(As amended, Dec. 18, 1958, order No. 58-2071-A.)

Organization Order No. 108—Amended Citizens' Traffic Board.

PART VII

FEBRUARY 18, 1959.

1. That Organization Order No. 108, dated May 17, 1955, as amended, relating to the Commissioners' Traffic Advisory Board, is further amended to read as follows:

PART I

Citizens' Traffic Board.—There is hereby established a permanent committee of citizens to be known as the Citizens' Traffic Board.

PART II

Purpose and functions.—The purpose of the Citizens' Traffic Board is to advise the Board of Commissioners generally and the Engineer Commissioner specifically in improving traffic safety and traffic conditions in the District of Columbia. In accomplishing this purpose, the Board shall:

1. Serve as advisers by recommending ways and means of improving traffic conditions and traffic safety.

2. Serve as a traffic safety public support organization, by exercising such leadership within the community as may be necessary or appropriate to develop public understanding and support of the Official Traffic Safety Program of the District of Columbia.

3. Support the Board of Commissioners in obtaining or improving legislative, administrative, planning, or enforcement measures which will result in the safer and more expeditious movement of traffic.

The Board is hereby authorized to accept voluntary subscriptions of business, civic, trade, professional, and other organizations and individuals to implement the above-listed functions.

PART III

Composition and membership:

1. The Citizens' Traffic Board shall consist of not to exceed 25 members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. Members shall hold office for terms of three years, except that of the initial appointments one-third shall serve for one year, one-third for

two years, and one-third for three years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

2. The Board shall solicit the participation in its activities of those individuals, firms, associations, and other groups considered by the Board qualified and willing to assist in the Board's mission. Invitations to participate in the activities of the Board and the acceptances of such invitations will be made a matter of record by the Board.

PART IV

Organization:

1. The Board of Commissioners shall designate the Chairman and Vice-Chairman of the Board.

2. The Board shall otherwise determine its own organization, including the establishment of committees.

3. The Board shall determine its own rules of procedure.

PART V

Repeal of part V of Reorganization Order No. 54.—Part V of Reorganization Order No. 54, dated June 30, 1953, as amended, is repealed in its entirety.

2. All appointments to the Commissioners' Traffic Advisory Board established by Part V of Reorganization Order No. 54, as amended, and continued by Organization Order No. 108, dated May 17, 1955, as amended, are terminated as of the effective date of this amendatory order.

3. This amendatory order shall be effective on and after February 17, 1959.

(As amended, Feb. 18, 1959, order No. 59-253.)

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

Reorg. Ord. No. 55, G. F. No. 47-2300, June 30, 1953, as amended August 13, 1953, December 17, 1953, June 30, 1954, October 2, 1956, and October 16, 1956, ordered that:

PART I

Department of Licenses and Inspections.—There is established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such of the powers herein delegated as, in his judgment, are warranted in the interests of efficiency and good administration. However, the power to grant variances from the requirements of the housing code shall be limited to the Director and Deputy Director or, in their absence, the Acting Director of the Department. (As amended by order dated August 11, 1955.) All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Licenses and Inspections is established for the purpose of: administering the laws enacted by Congress and the regulations for the control of construction, zoning and occupancy use, erection, maintenance and repair, inspection and removal of all buildings and their appurtenances, and electrical and mechanical equipment within the District of Columbia, excepting public buildings or premises under the control of the Federal Government; administering the D. C. Standard Weights and Measures Law; supervising and controlling the municipal markets and collecting annual revenue for rents and space and for wharfage at the Municipal Fish Wharf; administering the License Act of 1932, as amended, and regulations promulgated thereunder requiring licenses of certain businesses and callings in the District of Columbia; administering the acts requiring licenses for Cooperative Associations, Credit Unions, Pawnbrokers, and Loan Brokers; administering such portions of the Acts as require licenses for: Cigarette Vending Machine Operators and Retail and Wholesale Cigarette dealers; administering the portions of the Act

of July 5, 1945 which require the payment of a dog tax and the issuance of a dog tag; administering the provisions relating to the licensing of peddlers and the granting of permits for the use of public space contained in the act of August 6, 1956, known as the "Presidential Inaugural Ceremonies Act;" administering and interpreting all laws and regulations governing housing in the District of Columbia; and proposing to the Board of Commissioners appropriate provisions for codes and regulations relating to such housing; provided, however, that the Department of Public Health shall fully collaborate in the development and presentation to the Board of Commissioners of such proposed provisions to the extent that they affect the public health of the community and its individual members.

PART III

Organization and functions.—There are established in the Department of Licenses and Inspections the following organizational components, responsible for the performance of the functions outlined below consistent with the purpose specified above:

a. Office of the Director.

1. Develops and proposes to the Board of Commissioners major policies and procedures, regulations and revisions thereto, on licensing, permit and certificate issuance, inspection, and related regulatory activities within the purview of the Department's functions. In such matters, where they are of a public health nature, the Department of Public Health shall fully collaborate.

2. Administers and interprets all housing regulations of the District of Columbia. The Director shall in writing effect a specific delineation of responsibilities between himself and the Deputy Director, particularly in connection with development, interpretation, and enforcement of standards and regulations relating to housing.

3. Plans the programs and prescribes the policies of the Department, and plans, directs, coordinates, and supervises its activities.

4. Advises and assists the Commissioner to whom the Department is assigned on all matters falling within the purview of the Department.

5. Develops, presents, and justifies departmental budget estimates.

6. Prescribes the forms to be used for licenses, permits and certificates issued by the Department and approves the adoption and installation of such systems and equipment as are required for the Department.

7. Conducts engineering studies and research for the purpose of establishing technical standards in the public interest, covering licensing, inspections, and other regulatory activities of this Department.

8. Upon referral by the License and Permit Division, reviews other Departments' recommendations (except for those of the Department of Public Health) relating to the issuance or renewal of licenses, permits, and certificates issued by the Department of Licenses and Inspections, and where such recommendations, in the light of the facts alleged by the recommending Department, appear to be inconsistent with the language and intent of the applicable laws and regulations, modifies or reverses them.

(By order dated Oct. 26, 1954, paragraph 8, was deleted and paragraph 9, was renumbered to number 8.)

9. In cases where a recommending department head determines that violations of regulations are causing conditions that are imminently dangerous to health, safety or welfare, he summarily suspends the license, permit, or certificate, which suspension continues and precludes any renewal until the condition is corrected. In all other cases, after due notice which specifies violations and reasons for proposed action, and after expiration of 7 days from date of service, to allow for appeal to the Board of Appeals and Review, and if no appeal is noted, suspends or revokes licenses, permits or certificates. (Subparagraph a.9 amended Nov. 27, 1957, by order No. 57-3190.)

10. Administers the housing code of the District of Columbia, and is authorized to grant such variances from the terms of the Housing Code as may be permitted by the provisions thereof. In his discretion, may refer cases

under consideration for the granting of a variance, without final decision, to Board of Appeals and Review for latter's action. Periodically, but not less often than once each month, prepares and submits to the Board of Commissioners, with an information copy to the Board of Appeals and Review, a summary listing of all variances granted by the Department's officials under the Housing Code during the period and the reasons therefor. (New paragraphs 9 and 10 added by order dated Aug. 11, 1955.)

11. Notifies owners of any real property in the District of Columbia to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, the abatement or correction of such nuisance or condition said owners are by law or by said regulation chargeable. If the owner of said property cannot be found within the District of Columbia, notifies the Secretary of the Board of Commissioners who shall cause a notice to be published to such owner in the manner required by law or regulation. After the service of notice, if the owner of said property shall fail or refuse to abate such nuisance or to correct such condition, or shall fail to show cause sufficient in the judgment of the Director of Licenses and Inspections why he should not be required to abate or to correct such nuisance or condition, said Director shall notify either the Director of Buildings and Grounds or the Director of Sanitary Engineering, as the character of the nuisance or condition requires, who shall cause the nuisance to be abated or the condition to be corrected subject to assessment as provided by law.

12. Notifies the Director of Public Health and the Assessor, in writing, of each abatement of nuisance or correction of illegal condition case initiated.

13. Upon notification from the Director of Buildings and Grounds or the Director of Sanitary Engineering, as appropriate, that a nuisance has been abated or an illegal condition has been corrected, arranges for reimbursement to the Department concerned for the cost of such abatement or correction and furnishes the Assessor a statement of the exact cost, including the cost of publishing notices, if any, of each case completed.

14. Upon notification from the Chief of Police that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, initiates such action as is necessary, in accordance with the provisions contained in Parts III A 11, 12 and 13 herein, to cause such nuisance or illegal condition to be abated or to be corrected.

15. The authority vested herein to initiate action in connection with the abatement of a nuisance or the correction of an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Licenses and Inspections. (Subparts 11, 12, 13, 14, and 15, added by Order No. 56-215, dated Jan. 31, 1956.)

16. After receipt of a recommendation from the License and Permit Division, upon due notice, and after expiration of a reasonable period for a request for a hearing, and if no hearing has been requested within such period of time, or based upon a review of the record of such hearing if one has been held, denies, revokes or suspends Pawnbrokers' Licenses and prepares and serves on the applicant or licensee written decisions and findings with respect thereto.

b. Office of Administration.

1. In collaboration with operating divisions, performs non-technical studies necessary to determine, for the Director, problem areas in pertinent existing codes and regulations. With assistance of operating divisions and research engineer in office of Director, coordinates with other Departments, as appropriate, Department planning and programming for preparing and revising applicable codes and regulations, and makes recommendations thereon to the Director. After approval by the Zoning Commission, is responsible for the printing, distribution and sale of Zoning Regulations. Prepares for the Director regulations and appropriate revisions thereto, incorporat-

ing in them pertinent approved technical revisions of research engineer, operating Divisions and other Departments, as appropriate covering licensing, permit and certificate issuance, inspection, and related regulatory activities. Provides administrative service for research engineer in office of the Director. (Phase beginning with "After" and ending with Regulations inserted by order No. 58-1161, July 22, 1958.)

2. Prepares procedural manuals for the Department to govern licensing, permit issuance, and inspection, and plans and conducts the training of the Department's personnel.

3. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, administrative services, personnel, and management improvement activities.

4. Prepares, for the Director, programs and plans of operation, including budget requests and justifications, and periodic and annual reports.

5. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the offices of the Department of Licenses and Inspections on administrative programs.

6. Plans, develops, and installs standard department-wide reporting systems which will furnish detailed data on employee performance, personnel requirements, Department operations, and activity costs.

7. Subject to approval of Department Director, develops and installs systems, procedures, forms, records, and other related matters for the Department.

c. Housing Division.

1. In collaboration with the Department of Public Health, develops and submits to office of the Director of the Department, through the Office of Administration, for review and presentation to the Board of Commissioners, proposed standards and regulations, and revisions to and interpretations of standards and regulations, relating to the housing code of the District of Columbia.

2. Administers and executes the District Government's program for improving housing under the housing regulations, and conducts all initial inspections of housing under the housing regulations of the District of Columbia, with the exception of those performed by the Fire Department.

3. When the premises inspected are in compliance with the housing regulations, so notifies the License and Permit Division which will in turn so inform the owner of the premises. When deficiencies are noted, prepares notice citing specific shortcomings and remedial work required; routes such notice to Inspection Division, which may, in its discretion, further inspect the premises insofar as mechanical, electrical, and structural deficiencies are involved and further specify deficiencies and remedial work to be performed, prior to transmittal of the deficiency notice to License and Permit Division. In cases of extreme insanitation, refers facts immediately to Board for Condemnation of Insanitary Buildings for appropriate action by such Board.

4. Responsible for noting structural defects and referring them to the Inspection Division, and for seeing that houses are free of insects, pests, rodents, and vermin. When, in the course of inspections under the housing regulations or in response to complaints, evidence of infestation by insects, pests, rodents, or vermin is encountered, requests the Department of Public Health to undertake or supervise proper fumigation or extermination.

5. Supervises ways and methods to assure adherence to proper standards of hygiene for human habitation and related matters in residential premises; heating, lighting, ventilation, aerial pollution, noises and public health nuisances related to housing and dwelling premises; crowding and sanitation of living quarters; and health hazards associated with living units.

6. Receives and responds to all complaints regarding housing and takes necessary action.

d. Inspection Division.

1. Examines and approves plans for new construction, structural alteration, or repair, and conducts inspections to assure that the actual construction, alteration, or re-

pair is in conformance with the applicable legal and regulatory requirements.

2. Reviews deficiency notices transmitted by Housing Division, conducts further inspections as may be necessary in connection with mechanical, electrical and structural deficiencies and, as may be necessary, adds to citations of specific deficiencies and remedial work required.

3. Where permits are requested to perform work necessary to remedy failures to comply with the housing regulations, examines plans to ascertain whether they are sufficient to remedy such deficiencies. Upon completion of work required to remedy deficiencies under the housing regulations, inspects to ascertain whether deficiencies have indeed been remedied.

4. Conducts inspections to assure that all buildings, structures, their equipment and appurtenances, and all excavations, are in compliance with applicable regulations; takes action to secure correction of deficiencies, either through repair or alteration, through the condemnation of unsafe structures (subject to the limitations imposed in subparagraphs 5, 6, and 7 which follow), elimination of the unsafe conditions. (Words after "conditions" deleted by order No. 58-1161, July 22, 1958.)

5. Where, after examination, it is determined that the public safety requires immediate action to correct an unsafe structure or excavation, directs the performance of work to correct the unsafe structure or excavation either through: shoring up, taking down, or otherwise securing the structure or excavation, including the providing of any fence or boarding necessary to protect passers-by.

6. Where, after examination, it is determined that an unsafe structure or excavation exists, and is in need of correction, but the public safety does not require immediate action, takes the necessary action to notify the owner, agent, or other person having an interest in said structure or excavation to cause the same to be made safe and secure.

7. If the owner, agent, or other party interested in said unsafe structure or excavation shall refuse or neglect to comply with the requirements of said notice, the case will be reviewed by the Department Director, and if he approves the action of the Inspection Division the case will be referred to the Unsafe Structures and Excavations Board, which shall make a careful survey of the premises, and make a report of such survey as required by law. If the report of the Unsafe Structures and Excavations Board shall declare the structure or excavation to be unsafe, the Division performs the operating functions essential to correcting the unsafe condition.

8. Conducts inspections concerning the installation and operating condition of elevators, and of plumbing, electrical, smoke and boiler, and refrigeration equipment; takes action to secure correction of any deficiencies disclosed.

9. Conducts inspections necessary to provide adequate safeguards to the public safety.

10. Receives, reviews, and recommends approval or denial of requests for licenses or permits referred to the Division for action.

11. Enforces the standard weights and measures law for the District of Columbia, and regulations promulgated thereunder.

12. Supervises and operates the Municipal Markets, including responsibility for plant protection, exercise of the police power described in Title 10, Sec. 10-126, D. C. Code, custodial services, repair, collections, and miscellaneous administration.

13. Advises and assists the Department Director on matters pertaining to the inspection activities of the Division.

e. License and Permit Division.

1. Processes and issues licenses, permits, and certificates for: the operation of businesses; building and certain other types of construction and alteration or repair; building use; and other miscellaneous matters requiring a license, permit, or certificate.

2. Provides advice and assistance to the public as to the requirements for license, permit, and certificate issuance,

the preparation of applications, and the explanation of regulations governing such matters.

3. Serves as the central point from which the public requests licenses, permits, and certificates; receives, reviews, sorts, routes, and controls all such applications during their processing.

4. Normally notifies applicants of approval or disapproval of their applications for licenses, permits, and certificates issued by the Department. Upon receipt of recommendations of approval from the Housing Division, the Inspection Division, Zoning Division, the Fire Department, the Department of Public Health, and other departments, as appropriate, issues licenses, permits, certificates, or other notices of compliance with applicable regulations. Upon receipt of recommendations of disapproval from the Divisions of the Department of Licenses and Inspections and other departments, examines data received and requests supplemental data if necessary for complete clarity. Prepares consolidated list of deficiencies and remedial actions required, and furnishes copy to applicant with advice that applicant, if he desires to discuss the matter or secure further information, may meet for such purpose with D. C. Government officials concerned; if applicant desires such meeting, refers him to the officials involved or arranges meeting with such officials, as appropriate. Upon receipt of notice from agencies involved in such meetings as to whether they desire to revise their findings or recommendations as a result of the meeting, advises applicant of such determinations and, in non-approval cases, notifies applicant in writing that if deficiencies are not remedied as required, license, permit, certificate, or other form of approval will be denied; except that where recommendations made by any of the recommending agencies (except the Department of Public Health in connection with inspections for which that Department is responsible), in the light of the facts alleged by the recommending agency, may appear to be inconsistent with the language and intent of the applicable laws and regulations, refers such recommendations together with all pertinent details to the Office of the Director for review and determination. In inspectional matters for which the Department of Public Health is responsible, as outlined in Reorganization Order No. 57, as amended, the action taken shall be the same as that recommended by the Department of Public Health. All determinations relative to these matters may be appealed to the Board of Appeals and Review, and a statement to this effect shall be incorporated in all notices of unfavorable action sent to members of the public.

In cases in which renewal of licenses requires exercise of discretion and in which valid licenses were in effect for the year immediately preceding that covered by the application, issues renewal licenses forthwith, consistent with regulations and Licenses and Inspections Procedure Manual without the preceding, qualifying inspections or recommendation required in the cases of original licenses from any of the agencies enumerated in the preceding paragraph. (Above par. added by order No. 57-3190, dated Nov. 27, 1957.)

In case of renewal actions which are purely ministerial in nature, renews the permit or certificate without referral to other units of the Department or outside the Department.

When warranted, recommends to the Director the denial, revocation, or suspension of a Pawnbroker's license. (Words "Zoning Division" added by order No. 58-1161, July 22, 1958.)

5. Recommends to the Board of Appeals and Review suspension or revocation, for good and sufficient cause, of licenses, permits, and certificates previously issued subject to such review as may be indicated by the Department Director.

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be apprised of what has transpired

prior to the appeals action, as well as the basis for the denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, or restoring the license, permit, or certificate, as the case may be.

7. Inspects and controls the operations of loan companies, pawnbrokers, motor vehicle dealer sales contracts, and such other appropriate areas of business regulation as the Commissioners may prescribe.

8. Maintains centrally all files and records of the Division.

9. Collaborates with the Office of the Collector of Taxes in developing and administering procedures relating to facilities for the collection of fees.

10. Investigates and takes necessary action to obtain compliance with the license, permit, and certificate laws and regulations enforced by this Department; furnishes expert services to other offices of the Department in non-compliance cases brought to Court; collaborates with the Office of the Corporation Counsel in representing the interests of the Department in legal matters; and provides expert testimony in court as required. (Added by order dated Oct. 26, 1954.)

11. Acts as attorney-in-fact for licensed pawnbrokers for the purpose of receiving judicial and other processes and legal notices.

12. In the inspection and control of the operations of licensed pawnbrokers, the Chief of the License and Permit Division is authorized to require by subpoena the production of books, papers, and records and the attendance, and examination under oath of all persons whomsoever whose testimony he may require relative to the loans of business of any such licensee, and he shall possess the power vested in the Commissioners by the Act of July 1, 1902 (D. C. Code, 1951 ed., Sec. 1-237) to administer oaths, and he and his designated representatives are authorized to have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under a pawnbroker's license.

f. *Zoning Division*.—The Zoning Division shall be headed by a Zoning Administrator who shall be responsible for administratively interpreting and enforcing the Zoning regulations. All authorities and powers delegated to the Zoning Administrator are delegated through the Director of Licenses and Inspections; however, appeals from zoning decisions by the Zoning Administrator which are properly appealable under the Act of June 20, 1938 to the Board of Zoning Adjustment shall be made direct to said Board of Zoning Adjustment.

The Zoning Division shall be responsible for the performance of the following specific functions:

1. Administers and enforces the Zoning Regulations of the District of Columbia.

2. Administratively interprets the Zoning Regulations and makes administrative decisions thereon. Reviews and approves subdivision proposals for compliance with the Zoning Regulations.

3. Reviews applications for building permits and for certificate of occupancy, and supervises inspections of premises, buildings and other structures in connection therewith to determine if existing or proposed structures and uses comply with the provisions of the Zoning Regulations. Approves or rejects all such applications on the basis of the Zoning Regulations.

4. Develops and furnishes the Office of the Zoning Commission, the National Capital Planning Commission, and other agencies, research and planning data accruing within the Department of Licenses and Inspections for zoning, land use, and other operational needs.

5. Upon the basis of experience in the administration and enforcement of the Zoning Regulations or upon observance of defects in them, may propose changes in the regulations and maps.

6. Prepares and maintains a register of all nonconforming uses. Inspects periodically nonconforming uses and conducts a control operation to bring about elimination of such uses under existing laws and regulations.

7. Inspects intermittently all properties in the District of Columbia to determine compliance with the Zoning Regulations and compliance with conditions imposed by the Board of Zoning Adjustment.

8. Conducts periodic instrument surveys of commercial and industrial properties to determine compliance with the standards of external effects set forth in the Zoning Regulations.

9. Establishes and maintains a zoning information office for use by the public on all matters relating to the Zoning Regulations and Maps and their administration and enforcement.

10. Upon request by the Zoning Commission or the Board of Zoning Adjustment, appears before the requesting body to present to such body facts and administrative interpretation and, on specific request, may make recommendations to assist those bodies in reaching decisions.

11. Maintains permanent and current records relative to the administration, interpretation, and enforcement of the Zoning Regulations.

12. In the enforcement of the Zoning Regulations presents facts and recommendations to the Corporation Counsel for possible prosecution in the courts, provides expert testimony as required and collaborates with the Corporation Counsel in all legal matters where the Corporation Counsel is either enforcing the zoning laws or regulations, or defending a lawsuit arising under the zoning laws or regulations, and maintains a complete record of such actions and their final disposition. (Subpart f added by order No. 58-1161, July 22, 1958.)

PART IV

Transfers.—a. There are hereby transferred to the Department of Licenses and Inspections all functions and positions of the following named organizations and their subordinate agencies, including all duties, powers, and authorities in connection therewith of all officers and employees assigned thereto:

Department of Inspections:

Engineering Section.

Building Inspection Section.

Electrical Inspection Section.

Elevator Inspection Section.

Fire Safety Inspection Section.

Plumbing Inspection Section.

Smoke and Boiler Inspection Section.

Administrative Section.

Department of Weights, Measures, and Markets.

License Bureau.

Central Permit Bureau.

License Committee.

b. *Positions*.—The following positions are hereby transferred from the Department of Public Health to the Department of Licenses and Inspections:

21-15- 2	Assistant Director.....	GS-12
71	Public Health Engineer.....	GS-11
4	Assistant Chief Sanitary Inspector.....	GS-8
8	Sanitary Inspection Supervisor.....	GS-7
11	Sanitary Inspection Supervisor.....	GS-7
12	Sanitary Inspection Supervisor.....	GS-7
13	Sanitary Inspector and Instructor.....	GS-6
16	Sanitary Inspector and Instructor.....	GS-6
17	Sanitary Inspector and Instructor.....	GS-6
18	Sanitary Inspector and Instructor.....	GS-6
69	Condemnation Aide.....	GS-6
70	Condemnation Aide.....	GS-6
23	Sanitary Inspector.....	GS-5
28	Sanitary Inspector.....	GS-5
30	Sanitary Inspector.....	GS-5
34	Sanitary Inspector.....	GS-5
35	Sanitary Inspector.....	GS-5
36	Sanitary Inspector.....	GS-5
37	Sanitary Inspector.....	GS-5
38	Sanitary Inspector.....	GS-5
41	Sanitary Inspector.....	GS-5
43	Sanitary Inspector.....	GS-5
45	Sanitary Inspector.....	GS-5
66	Sanitary Inspector.....	GS-5
67	Sanitary Inspector.....	GS-5
72	Secretary.....	GS-5
5	Secretary.....	GS-4
7	Clerk-typist.....	GS-3

c. Except for committee members, serving as such in addition to their regular duties, who are not full-time employees of any of the organizations transferred herein, all personnel, property, records, and unexpended balances

of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in Sections A and B of Part IV above, are hereby transferred to the Department of Licenses and Inspections.

PART V

Transfer From New Department.—The Director of the Department of Licenses and Inspections, working in close cooperation with officials of the Departments concerned, shall:

a. Develop a program and procedures to abolish as separate entities the Fire Safety and Egress Section, eliminating those functions which duplicate activities of other segments of the Department and other Departments.

1. Such a proposed program shall take cognizance of the fact that the Department of Licenses and Inspections continues as the enforcement and interpreting authority in all matters pertaining to the construction, alteration, repair, installations, zoning and occupancy use and appurtenances of buildings and structures, as set forth in D. C. Building, Plumbing, Electrical Codes, Elevator, Sign, Zoning, Refrigeration and Air Conditioning, Gas Fitting, Boiler Inspection, rules and regulations governing installation of fuel burning equipment, and the D. C. housing regulations, while the Fire Prevention Division has the primary responsibility for conducting egress and fire prevention inspections.

2. The program shall provide for the transfer, reassignment, or separations of personnel previously assigned to the Fire Safety and Egress Section, and for the disposition of all positions and funds available to the Fire Safety and Egress Section.

PART VI

Adjusting Fees for Licenses, Permits, Certificates, and Transcripts.—a. The Director of the Department of Licenses and Inspections is hereby assigned the responsibility for recommending to the Board of Commissioners the fees to be charged for all licenses, permits, certificates, and transcripts of records issued by that Department, which the Commissioners are authorized to establish, and for recommending to the Zoning Commission the fees for occupancy permits.

b. The Director of the Department of Licenses and Inspections is also assigned the responsibility for recommending to the Board of Commissioners proposed legislation concerning the fees to be charged for licenses, permits, certificates, and transcripts of records, where legislation is required to accomplish changes in the fees charged.

c. A study shall be undertaken as soon as practicable to determine what such charges shall be and specific recommendations shall be submitted to the Board of Commissioners as soon as the study has been concluded.

d. In arriving at the proposed fee schedules, the charge shall be based upon the costs as outlined in the District of Columbia Code, i. e., in the case of business licenses, the costs “* * * will be commensurate with the cost to the District of Columbia of such inspection, supervision, or regulation * * *” and in the case of permits, certificates, and transcripts of record “* * * said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits. * * *”

e. The directors of all other District Government departments who are concerned with the costs of such processing shall provide the Director of the Department of Licenses and Inspections with pertinent cost data for use in arriving at the total costs to be charged for licenses and permits.

f. The Director, Department of Licenses and Inspections, is assigned the responsibility of biennially making cost studies and revising the costs for all licenses, permits, certificates, and transcripts of records issued by that Department; *Provided*, That such studies shall be completed in time to permit the Board of Commissioners to make revisions in the schedules, such revisions to be effective in the last half of calendar year 1958 and every two years thereafter; and, *Provided further*, That the Director, Department of Licenses and Inspections, may

make such cost studies and revise the costs for any one or more of such licenses, permits, certificates, and transcripts of record more frequently at his discretion, when circumstances warrant. The Director, Department of Licenses and Inspections, is further assigned the responsibility for recommending to the Board of Commissioners any necessary changes in the fees for such licenses, permits, certificates, or transcripts of record; such recommendations are to be submitted to the Board of Commissioners in sufficient time to allow adequate notification to the public prior to the effective date of changes in the fees to be charged. (Amended, by order dated June 13, 1957, No. 57-1097.)

PART VII

Establishing a Work Measurement and Cost Accounting System.—a. In order to simplify and facilitate the adjustment of fees in the future, the Director of the Department of Licenses and Inspections is hereby assigned the responsibility for developing and installing a work measurement and cost accounting system for the Department which will provide the following:

1. Data as to workload, productivity, costs, and revenues:

2. Cost data to be used to recommend the adjustment of fees for licenses and permits;

3. Data to prepare and justify budget estimates.

4. Data to be used as a basis for preparing the quarterly reports to the Board of Commissioners to inform them as to performance, work status, and operation of the Department.

5. Data from which the Department's personnel needs can be scientifically determined.

b. In developing the system to be installed, the Director of the Department of Licenses and Inspections shall call upon the Budget Office, the Accounting Office, and the Management Office for technical advice and assistance, and the system shall be reviewed by the Director of General Administration before adoption.

c. The study shall also encompass the data which must be maintained by other departments—Department of Public Health, Police Department, Fire Department, Department of Highways, Department of Sanitary Engineering, and any others—for the adjustment of fees for licenses, permits, certificates, and transcripts of records. The Director of the Department of Licenses and Inspections shall contact all such departments and they shall participate in the development of the records which are to be maintained by them. Such records must of necessity, be designed to fit in with the over-all system which is developed.

PART VIII

Unsafe Structures and Excavations.—In accordance with the provisions of Section 5-502, D. C. Code, 1951 edition, when the public safety does not, in the judgment of the Director of Licenses and Inspections, demand immediate action to make a structure or excavation safe and secure or to remove such structure or excavation, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the Chairman of the Board of Appeals and Review acting as agent for the Commissioners of the District of Columbia, one by the owner or other person interested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the Director of Licenses and Inspections and the person chosen by the Chairman of the Board of Appeals and Review acting as agent for the Commissioners, and in case of disagreement they shall choose a third person, and the determination of a majority of the three so chosen shall be final. (New Part VIII added by order Aug. 11, 1955; former parts VIII and IX were eliminated. See organization order No. 12.)

Disinterested persons serving as members of such survey teams, other than employees of the District of Columbia Government and members appointed by owners or other interested parties, shall each be paid from District of Columbia funds a fee of \$15.00 for each survey. (Last sentence added by Order No. 56-1363, dated July 10, 1956.)

PART IX

Recommendations for Improvement.—It is recognized that the licensing and inspection operations of the District of Columbia Government are currently in a state of rapid transition to meet the ever increasing needs of the local community, particularly with respect to habitable premises. Therefore, the Director of the Department of Licenses and Inspections shall prepare and submit to the Board of Commissioners, on or before December 31, 1954, a plan for training and reassignment of personnel, and any recommendations which he may care to make with respect to internal organization of the Department to achieve the objectives of more effective and economical operations, improved utilization of personnel, elimination of overlapping and duplicative inspections, and simplification of procedures. These recommendations shall be coordinated with the Department of General Administration prior to their submittal to the Board of Commissioners. Particular attention should be given to the desirability of reducing the number of inspectors now required to visit and inspect premises.

PART X

Repeal of Previous Orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART XI

Effective Date.—The foregoing provisions of this Order, as amended, shall become effective on June 30, 1954.

PART XII

Gas Code and Appliance Technical Committee.—There is hereby established a Gas Code and Appliance Technical Committee, composed of such members as the Board of Commissioners desires to appoint, which shall serve in an advisory capacity to the Director of Licenses and Inspections for the purpose of making recommendations to said Director as to such changes, additions and rearrangements of the Gas Fitting Regulations as said Committee deems necessary in the public interest to bring said regulations into conformity with approved modern practice and for advising said Director in technical matters pertaining to gas fitting. (Added by order No 56-1377, dated July 10, 1956.)

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS [IMPLEMENTING ORDER]

[TEXT OMITTED]

This order dated January 5, 1954, appointed members to the Unsafe Structures and Excavations Board in accordance with paragraph III (f) of Reorganization Order No. 55.

REORGANIZATION ORDER NO. 56.—BOARD OF THE CONDEMNATION OF INSANITARY BUILDINGS

Reorg. Ord. No. 56, G. F. 6-060, June 30, 1953, as amended June 30, 1954, ordered that:

(Part V of Organization Order No. 102 set out after § 5-617, provides that the existing Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, is abolished.)

PART I

Board for the Condemnation of Insanitary Buildings.—a. There is hereby established, as an independent Board, with the Department of Licenses and Inspections furnishing fiscal and housekeeping services, a Board for the Condemnation of Insanitary Buildings, to be composed of an Assistant to the Engineer Commissioner, a representative of the Department of Public Health, and a representative of the Department of Licenses and Inspections.

b. The Assistant to the Engineer Commissioner member shall serve as Chairman of said Board.

c. The members of the present Board for the Condemnation of Insanitary Buildings are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

d. The Board for the Condemnation of Insanitary Buildings shall have full authority over all functions and personnel assigned thereto, including the power to redelegate to its employees such ministerial duties and responsibilities as said Board shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Board for the Condemnation of Insanitary Buildings is established for the purpose of gathering facts and making determinations in writing as to the sanitary condition of buildings, condemning those buildings in such a condition as to endanger the health or safety of its occupants or the public, and requiring insanitary buildings to be put into sanitary condition or to be vacated, demolished, or removed as the condition may require.

PART III

Organization.—There shall be established under the Board for the Condemnation of Insanitary Buildings so many positions with such duties and responsibilities as the said Board, with the approval of the Commissioners, shall from time to time determine.

PART IV

Powers, authorities, and jurisdiction.—All powers and authorities and jurisdiction authorized by statutes or by the Board of Commissioners to be exercised by the existing Board for the Condemnation of Insanitary Buildings, including its chairman and members, shall be hereinafter vested in the new Board for the Condemnation of Insanitary Buildings.

PART V

Administrative staff.—The staff essential to perform the administrative functions for the Board shall be provided by the Department of Licenses and Inspections.

PART VI

Abolition of existing Board.—The existing Board for the Condemnation of Insanitary Buildings, including the Office of the Chairman thereof, is abolished.

PART VII

Repeal of previous Orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, repealed.

PART VIII

Effective date.—This Order shall become effective on and after June 30, 1953.

REORGANIZATION ORDER NO. 57.—DEPARTMENT OF PUBLIC HEALTH

Reorg. Ord. No. 57, G. F. No. 6-100, June 30, 1953, as amended June 30, 1954, ordered that:

PART I

Department of Public Health.—There is established, under the direction and control of a Commissioner, a Department of Public Health, headed by a Director. The Director shall have full authority over such Department and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration.

All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Public Health is established for the purpose of planning, implementing, and directing public health and hospital care programs which will most effectively maintain and improve the health and

well being of the community and its people, and for performing certain other allied medical functions.

PART III

Organization and Functions.—There are established in the Department of Public Health the following organizational components, responsible for the performance of the functions outlined.

a. *Office of the Director.*—

1. Develops and proposes major programs, policies, and regulations on health, sanitation, disease control, hospital and clinic care, and vital statistics matters to the Board of Commissioners.

2. Coordinates municipal health services and resources with voluntary health resources and services to provide the maximum of coordinated service to the community.

3. Directs municipal hospital services and coordinates hospital services with other public health activities.

4. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all public health and municipal hospital programs, services and operations of the District of Columbia, including the capital improvements program for the Department.

5. Maintains liaison with the heads of all hospitals providing hospital care at District expense to permit joint periodic review of long term cases to expedite and facilitate, through rehabilitation and other resources, their return to the community or their transfer to other District or private facilities when the point of maximum hospital benefit has been reached.

6. Advises and assists the Board of Commissioners on all matters relating to public health and hospital care matters.

7. Develops, presents, and justifies departmental budget estimates, including hospital and out-patient care, revenue estimates, and estimates of other reimbursable items.

8. Notifies owners of any real property in the District of Columbia to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, the abatement or correction of such nuisance or condition said owners are by law or by said regulation chargeable. If the owner of said property cannot be found within the District of Columbia, notifies the Secretary of the Board of Commissioners who shall cause a notice to be published to such owner in the manner required by law or regulation. After the service of notice, if the owner of said property shall fail or refuse to abate such nuisance or to correct such condition or shall fail to show cause sufficient in the judgment of the Director of Public Health why he should not be required to abate or to correct such nuisance or condition, said Director shall notify either the Director of Buildings and Grounds or the Director of Sanitary Engineering, as the character of the nuisance or condition requires, who shall cause the nuisance to be abated or the condition to be corrected, subject to assessment as provided by law.

9. Notifies the Director of Licenses and Inspections and the Assessor, in writing, of each abatement of nuisance or correction of illegal condition case initiated.

10. Upon notification from the Director of Buildings and Grounds or the Director of Sanitary Engineering as appropriate, that a nuisance has been abated or an illegal condition has been corrected, arranges for reimbursement to the Department concerned for the cost of such abatement or correction and furnishes the Assessor a statement of the exact cost, including the cost of publishing notices, if any of each case completed.

11. Upon notification from the Chief of Police that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or any regulation made by authority of law, initiates such action as is necessary, in accordance with the provisions contained in Parts III A 8, 9 and 10 herein, to cause such nuisance or illegal condition to be abated or to be corrected.

12. The authority vested herein to initiate action in connection with the abatement of a nuisance or the

correction of an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Public Health. (Subpart 8 to 12, added by Order No. 56-216, dated Jan. 31, 1956.)

13. Administers the provisions of Chapter XI of Public Law 85-170, 85th Congress, approved August 28, 1957 ("Supplemental Appropriation Act, 1958") relating to the transfer of funds from the Department of Public Health to the Department of Public Welfare for the purpose of matching Federal grants under the Social Security Act for payment for medical services rendered recipients of Public Assistance as provided under that Act. (Par. 13, added by order No. 57-3110, dated Nov. 12, 1957; eff. Oct 1, 1957.)

b. *Office of Administration.*—

(a) *Business Administration Division.*—

1. Prepares budgets for District Funds and Federal Grants.

2. Maintains cost accounts and budgetary controls.

3. Administers the admission services for the medically indigent and others, in departmental and private contract hospitals, including determination of eligibility, charges to be made and collection of these charges, and the emergency homemaker and the ambulance service.

4. Exercises the following responsibilities in connection with the care and transportation of the insane:

a. Investigation of the residence and financial resources of persons purportedly residents of the District of Columbia who are coming before the Commission on Mental Health as insane.

b. Certification to St. Elizabeth's Hospital of persons applying for voluntary admission to the Hospital.

c. Negotiations with States of residence of non-resident insane for acknowledgment of residence and acceptance of return to those States.

d. Deportation to their States of residence of non-resident insane patients discharged by St. Elizabeth's Hospital.

e. Investigation and acceptance of return of District residents found insane in other States.

f. Payment for District residents while under care at St. Elizabeth's Hospital, including checking the monthly bill to the District for care of these patients.

5. Periodically reviews accounts of patients receiving long term hospital care to determine whether there has been any change in their financial status or that of responsible relatives.

6. Procures supplies and equipment.

7. Maintains storerooms and supplies.

8. Maintains inventory records of expendable and non-expendable property.

9. Administers the Federal Hill-Burton program for hospital construction.

10. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the divisions of the Health Department on budget and fiscal matters.

(b) *Administrative Management Division.*—

1. Plans, directs, coordinates, and administers management improvement activities; reviews in cooperation with other Divisions of the Office of Administration on a continuing basis, reporting systems, records systems, procedures, and other administrative activities.

2. Plans, supervises, and coordinates personnel operations in accordance with delegated authorities.

3. Maintains personnel files and records for all employees of the Department of Public Health.

4. Plans, coordinates, and directs the administrative operation of health centers and clinics with the responsible medical officer for the area; coordinates the staffing of these activities by the other bureaus and divisions.

5. Provides administrative services for the Department including maintenance of correspondence and other files, reproduction of material, and messenger service.

6. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the Divisions of the Department of Health on administrative management and personnel matters.

(c) Bio-Statistics and Health Education Division.—

1. Formulates, plans, and directs a centralized bio-statistics and vital statistics program.
2. Collects, correlates, and analyzes morbidity and vital statistical data; prepares reports, charts, graphs, and other visual methods for keeping the Board of Commissioners, the Director of Public Health, constituent bureaus, and the community informed on activities of the Department and its health programs.
3. Conducts statistical studies and assists in research projects of the Department.
4. Plans, organizes, and directs all health education activities.
5. Maintains records of births and deaths, and issues certified copies of such records.
6. Issues permits for the removal, burial, cremation, disinterment, or reinterment of the bodies of persons deceased in the District of Columbia, or of deceased persons brought into or transported out of the District of Columbia.

c. Bureau of Disease Control.—**(a) Preventable and Chronic Diseases Division.—**

1. Makes epidemiological studies of the prevalence and means of transmittal of contagious diseases and institutes procedures to prevent the spread thereof; controls all cases of communicable diseases except tuberculosis.
2. Quarantines, isolates, or restricts the movement of contagious disease patients and determines when quarantine may be lifted.
3. Directs a venereal disease program; makes physical examinations, provides medical treatment for infected patients, and investigates and follows-up contact sources.
4. Directs cancer control program; coordinates with cancer clinic services in the community and provides cancer detection service; reviews research findings as a means to the development and widespread use of the most effective methods of prevention, diagnosis, and treatment of cancer.
5. Performs or supervises other measures of preventive medicine such as giving immunizations, investigating outbreaks of food poisoning and examining food handlers, conducting a rabies program and supervising the aseptic preparation of formulae in hospital nurseries.
6. Develops and directs case finding programs involving chronic diseases; e. g., rheumatism, arthritis, cardiovascular involvement, diabetes, etc., as the needs of the community require and as funds are available.
7. Maintains, in conjunction with the Bio-Statistics Division, rosters of persons having venereal disease or cancer.
8. Conducts clinic operations necessary to carry out the above functions.

(b) Tuberculosis Control Division.—

1. Coordinates all tuberculosis control work in the District of Columbia, involving planning with professional societies, organizations, hospitals, and medical clinics to provide means of detection, treatment, and care to meet the needs of the community.
2. Operates chest clinics for detection and clinical evaluation and diagnosis; provides medical supervision of cases of tuberculosis for which ambulatory management is appropriate; initiates measures of public health supervision (isolation of contagious cases, etc.) when appropriate and as required by law.
3. Supervises, coordinates, and controls admissions of persons having tuberculosis to the municipal hospitals; maintains rosters of persons authorized and awaiting admission and after their discharge from the hospital.
4. Quarantines, isolates, or restricts the movement of unhospitalized patients having tuberculosis and determines when quarantine isolation or restriction may be lifted.
5. Maintains, in conjunction with the Bio-Statistics Division, a central register of all known cases of tuberculosis reported from any sources in order to assure medical supervision of these cases and permit epidemiological studies to be made.

(c) Home and Emergency Medical Service Division.—

1. Provides medical care, nursing, and other services in the home to patients suffering from chronic diseases or

recovering from acute illnesses who would otherwise be occupying hospital beds at public expense.

2. Provides medical treatment to eligible recipients outside hospital facilities, and refers for hospitalization or home care those patients requiring such treatment after initial examination and treatment by the visiting physician.

3. Coordinates the medical activities of this Division with the auxiliary services provided by other Bureaus, such as nursing services, emergency homemaker service, ambulance service, etc.

d. Bureau of Maternal and Child Health.—

Introductory statement.—The maternal and child health services, as described herein, are furnished through existing facilities and are provided by staff of the Bureau of Maternal and Child Health or by staff assigned from the Bureau of Mental Health and other components of the Department to function within the framework of the Maternal and Child Health program of services; these services are essentially preventive in nature or are otherwise considered necessary in the public interest and are provided in accordance with the intent and provisions of Commissioners' Order dated December 22, 1947, as amended, which relates to charges for clinic services furnished by the Department of Public Health. (As amended, Dec. 23, 1958, order No. 58-2083.)

(a) Office of the Chief:

1. Develops and proposes to the Director of Public Health, major programs, policies, and regulations for the promotion and protection of maternal and child health, including the provision of a comprehensive range of integrated multidisciplinary medical and other professional services in clinics, hospitals, schools, and homes for the promotion of maternal health throughout the reproductive cycle; the promotion of optimal growth and development of children from infancy through school age; the prevention, detection, and treatment of disease and defect in maternity patients and in children of all ages; and consultant, diagnostic, training, treatment, and rehabilitation services for children with actual or potential chronic handicapping and crippling conditions.

2. Advises and assists the Director of Public Health on all matters relating to maternal and child health. Plans, prescribes Bureau policies, coordinates, directs, controls, and is responsible for maternal and child health programs, services, and operations.

3. Coordinates maternal and child health services and resources of the Department of Public Health with other public health, public education, and public welfare services and with voluntary health and social resources and services in order to provide the maximum coordinated service to the community. Plans and develops, in cooperation with the medical and nursing professions and hospital administrators, and other Bureaus of the Department of Public Health, standards of care for the protection of maternity patients, infants and children in hospitals and institutions; and with the social welfare and education as well as the health professions; standards of care for places caring for children away from their own homes, including foster homes, day care centers, and nursery schools.

4. Directs the conduct of surveys and studies of services and facilities in the city for maternity, newborn, and pediatric care, and for handicapped and crippled children; studies of maternal, infant, and child morbidity and mortality; and of impact of socio-economic and other community factors, facilities and services on maternal and child health. Develops programs designed to implement the findings of such studies and to stimulate community participation and action where indicated.

5. Develops, presents, and justifies the Bureau budget estimates, including conformity with the requirements of the Social Security Act as these relate to participation by the District of Columbia in Federal grants-in-aid to the States.

(b) Administrative Office:

1. Directs, coordinates, and administers program improvement activities of the Bureau. In cooperation with the operating divisions of the Bureau and other concerned groups reviews and revises procedures, reporting

systems, record systems, and other administrative activities; prepares reports, charts, graphs, and other visual descriptions for the information and use of the Chief.

2. Plans, supervises, and coordinates Bureau personnel matters. In cooperation with the division heads and consulting staff, develops training programs for nonprofessional and volunteer staff, orients new employees—professional and pertinent nonprofessional, in the organization, functions, and interrelationships of the Bureau.

3. Provides other administrative services for the Bureau, including the maintenance of budgetary control and the preparation of the Bureau's budget, the procurement of supplies and equipment, the maintenance of inventory records of expendable and nonexpendable property, and the setting up and maintenance of administrative, correspondence and other files of technical material.

(c) *Office of Consultant and Special Services:*

1. Consult with and advises the Chief of Maternal and Child Health on the various specialized programs and disciplines functioning within the overall maternal and child health program, including obstetrics, pediatrics, pediatric psychiatry, plastic surgery, neurology, cardiology, otolaryngology, ophthalmology, clinical psychology, physical and occupational therapy, audiology and speech, child development and training, parent education, nutrition, and medical-social work.

2. Assists in developing and implementing training programs for students in training in the various maternal and child health programs, including hospital residents in pediatrics and various medical and surgical specialties and field training for students in occupational therapy, medical-social work, and clinical psychology.

3. Recommends to the Chief of the Bureau standards for, and gives technical guidance and impetus to the aforementioned programs as these are carried out by the principal divisions of the Bureau. Serves as a point of reference on technical medical questions and matters which arise, from time to time, in the administration of such programs.

(d) *School Health Services Division:*

1. Develops, directs, and implements a comprehensive school health service in collaboration with school personnel and other bureaus of the Department of Public Health. Special emphasis is placed on the promotion of normal physical, mental, emotional, and social development of the child; the prevention, recognition and diagnosis of defects, diseases, disabilities and mal-adjustments, either actual or potential; the treatment and adjustment of children with such defects, diseases, disabilities and mal-adjustments; and the control of communicable diseases.

2. Provides consultant and advisory services to teachers, parents and nurses on the health and well-being of school children.

3. Makes provision, through coordination with other health services and facilities, both public and private, for the correction of detected handicaps and diseases among school children.

4. Provides for conducting health appraisal examinations of school personnel, including teachers, custodians, and clerks.

(e) *Local M & CH Services Division:*

1. Provides a program of decentralized clinical services, through the operation of local child health centers for the health supervision of infants and pre-school and school children. Clinical services provided through child health centers include making total health appraisals; conducting tests and giving immunizations; treating and caring for minor and incipient illnesses; maintaining a system of referral and follow-up of sick children and handicapped or potentially handicapped children; advising parents and others on care and training of children; and conducting individual and group educational services on child development, child care and training, nutrition, parent-child relationships, and related matters.

2. Makes provision through coordination with other health services, and facilities, both public and private, for further diagnostic study, treatment and care, as needed, in clinic, hospital or home.

3. Collaborates with the other divisions and offices of the Bureau in carrying on a comprehensive program de-

signed to develop and to promote optimum maternal and child health throughout the community.

(f) *Central M & CH Services Division:*

1. Provides a program of centralized clinical services through the Gales Maternal and Child Health Center and the Handicapped and Crippled Children's Unit at D. C. General Hospital for consultant, diagnostic, treatment, training and rehabilitation services for children of all ages including the provision of physical and occupational therapy to children in the Health and Anthony Bowen Schools and the recommendation for school placement of children with handicapping and crippling conditions.

2. Supervises the centralized out-patient clinical services for maternity patients and for children of all ages at the Gales Maternal and Child Health Center. Children are referred to the Gales Center by local child health centers, schools, School Health Services, and parents. Clinical services which are provided encompass examination, diagnosis, treatment, consultation and include making total health appraisals, taking X-rays, conducting laboratory and special tests, furnishing pediatric psychiatry, cardiac, neurological, ophthalmological, otological, audiological, psychological and medical social services, and performing audiometric testing of pre-school and school children, including diagnostic follow-up examinations, interpretation of findings to parent and school personnel, and recommendation as to appropriate audiometric therapy and educational placement. Provision also is made through coordination with other health services and facilities, both public and private, for further diagnostic study, treatment and care, as needed, in clinic, hospital, or home.

3. Supervises the operation of the Handicapped and Crippled Children's Unit, located at D. C. General Hospital, which provides out-patient and in-patient clinical and related services for children with chronic or potentially chronic physically handicapping conditions. Such services include pediatric, pediatric psychiatry, orthopedic, plastic surgery, neurological, cardiac, psychological, physical therapy, occupational therapy, audiology, speech, and medical social services.

4. Collaborates with the other divisions and offices of the Bureau in carrying on a comprehensive program designed to develop and to promote optimum maternal and child health throughout the community.

(g) *Community Standards Division:*

1. Supervises a program for developing and promoting community standards regarding maternal and child health, including the investigation, study and evaluation of the adequacy of hospital facilities, services and standards of care for maternity patients, newborn infants and pediatric patients; the investigation, study and evaluation of maternity homes and places caring for children away from their own homes such as day nurseries, nursery schools, institutions and foster homes; the provision of consultant services to hospital maternity and pediatric departments, to maternity homes, and to places caring for children away from their own homes; the conduct of community wide surveys, studies and research projects to determine the maternal and child health needs and the adequacy of existing health resources in this area; to determine morbidity and mortality trends and to develop measures for their improvement; the stimulation of community interest in acceptance of, and participation in these various programs. (Subdivision g was amended by order No. 54-2546 dated Nov. 30, 1954.)

e. *Bureau of Public Health Nursing.*—

1. Formulates policies; develops professional practices and promotes sound standards of public health nursing to provide a continuity of professional nursing care to individuals and their families in homes, clinics, schools, hospitals, and related institutions.

2. Organizes and directs programs on instruction in hygienic measures for the promotion of health and the prevention of disease, both for individuals and groups in the community.

3. Plans with the families and community agency workers for the utilization of social, educational, and health services as needed.

4. Provides consultation in basic principles of healthful living as related to the needs of infants, children, adolescents, adults, and the aged, and in guidance to individuals in the development and improvement of health practices.

5. Investigates for the application of control measures, the sources of tuberculosis, venereal and other communicable diseases and the environmental, social, and economic factors involved; contributes to case findings, case holding, and the health instruction of patients and contacts.

6. Furnishes complete nursing care in the homes of patients when required.

7. Acts as consultant and advisor to professional and community groups concerned with the use of public health nursing services.

8. Cooperates with professional and lay groups in analyzing and evaluating community health needs and modifies the policies and practices of public health nursing to meet these needs.

9. Develops standards and regulations for nursing services in homes, hospitals, nursing homes, and related institutions.

10. Cooperates with the Medical Director of the two medical bureaus in the development of clinic programs, home care, and other similar services, and in the assignment of nursing personnel to these programs. Public Health Nurses assigned to clinics and centers will be under the administrative direction of the medical officer in charge, but for the technical supervision of nursing techniques they will be under the direction of the Bureau of Public Health Nursing.

f. Bureau of Laboratories and Pharmacies.—

1. Examines specimens for diphtheria, enteric diseases, malaria, meningitis, tuberculosis, streptococcus, staphylococcus, pertussis, infectious mononucleosis, gonococcus, rabies, fungi, causative agents in food poisonings, brucella, pneumonia, parasitic infections, Vincents Angina, Rickettsial diseases, or any specimen submitted from infectious diseases.

2. Examines specimens of water from drinking supplies, swimming pools, and stream pollution survey; and swabs from eating utensils, milk, cream, ice cream, foods, and drinking fountain heads.

3. Examines blood for RH, blood grouping, and Ascheim Zondek.

4. Conducts antibiotic sensitivity tests, bactericidal, and bacteristatic tests, fungicidal, and fungistatic tests.

5. Analyzes milk, cream, ice cream and other milk products; food, water, drugs, air, urine (alcohol determinations for Police Department), blood, samples in industrial hygiene problems, stream pollution survey, and samples submitted by the Coroner (toxicology), Police Department, Fire Department, and other departments of the District Government.

6. Conducts complement fixation and flocculation tests on blood and spinal fluid in the sero diagnosis for syphilis; conducts complement fixation tests for amoebiasis and microscopical examination of slides for gonococcus.

7. Distributes biologicals to indigent persons upon request of physicians; supplies medicine for the indigent sick on prescriptions of the District physicians, clinics of the Health Department, and the Public Assistance Division, Board of Public Welfare.

g. Bureau of Dental Health.—

1. Formulates, directs, administers, supervises, and coordinates a public health dental program.

2. Investigates, and applies control, prevention, and treatment measures to dental problems of varying age and socio-economic groups throughout the educational systems and dental clinics.

3. Formulates and develops standards of dental services in connection with the study and treatment of group and individual dental and pathological conditions.

4. Investigates and evaluates trends and developments in public dental health technique, procedures, and administration to determine the adaptability to the specific needs of the dental program.

5. Establishes standards and specifications for dental equipment, instruments, materials, and supplies to be

used by dental personnel engaged in the dental program.

6. Consults and advises with hospitals, sanatoria, and all District institutions, furnishing guidance to dentists and other professional personnel on dental problems.

7. Conducts dental clinics for the purpose of carrying out the above functions.

h. Bureau of Food and Public Health Engineering.—

1. Inspects licensed dairy farms and cattle thereon, milk plants, milk receiving stations and ice cream plants supplying milk and ice cream for human consumption in the District; examines slaughter houses and animals slaughtered for human consumption in the District; and collects samples of such items as are necessary for laboratory tests.

2. Inspects all types of food distribution establishments, food processing centers and food preparing or serving establishments, including the food proper, equipment and all items used in the distribution, processing, preparation or service of food, and the premises; collects samples and makes cultures for laboratory tests; examines animals for rabies and furnishes technical supervision over the program for the vaccination of dogs for the prevention of rabies.

3. Supervises ways and methods to assure adherence to proper standards of hygiene for occupations, work places, work material, work conditions, and related matters concerning city planning; heating, lighting, ventilation, aerial pollution, noise and public health nuisances related to vacant land, occupations and work places; and health hazards associated with work material and conditions.

4. Enforces from the standpoint of public health responsibilities the hygienic measures to be taken in such areas as the water supply, sewage disposal, collection and disposal of municipal wastes; bathing places, recreational areas and places of public assemblage; interstate carrier sanitation; controls industrial waste pollution of surface waters and water pollution. In connection with cross connections and plumbing defects encountered where an immediate danger to the public health exists, takes emergency action necessary to prevent further exposure of the public to the health menace and immediately informs Department of Licenses and Inspections of full circumstances in situation in order that the latter may secure correction of the deficiencies in accordance with applicable laws, codes and regulations.

5. Exercises leadership in public health preventive programs and corrective measures to control disease transmitted by insects, pests, vermin, and rodents in respect to the elimination of breeding places, eradication of the vector, and fumigation of materials and property. Upon request by the Department of Licenses and Inspections, undertakes or supervises proper fumigation or extermination measures in habitable premises.

6. Passes upon construction plans and alterations and performs pre-licensing inspections as required by regulation, except insofar as housing of all types is concerned.

7. Conducts educational classes in the public health aspects of environment, personal hygiene and food handling problems for industrial, environmental, management, and employee groups of the community.

i. District of Columbia General Hospital.—

Performs all functions presently performed by Gallinger Municipal Hospital.

j. Glenn Dale Hospital.—

Performs all functions performed by Glenn Dale Sanatorium.

k. Bureau of Mental Health.—

(a) Office of the Chief.

1. Advises and assists the Director of Public Health in mental health matters including: departmental policy and procedures affecting the mental health of the community; acquisition and utilization of mental health or psychiatric facilities; supplies and personnel; community education; professional training; research and development.

2. Develops and executes a comprehensive community mental health program directed towards: (a) continuous assessment and evaluation of the nature and extent of community needs for in-patient and out-patient mental

health services and care; (b) developing plans and procedures for meeting such needs, including the balanced utilization of government and non-government resources and facilities; and (c) integrating and coordinating the use of public and private resources, including hospital as well as non-hospital facilities, toward the end that the most effective use of all such resources will be insured at the most economical cost to the community.

3. Initiates contacts with public and private agencies, including hospitals, community organizations and private practitioners, to encourage and promote the maximum development and utilization of community resources, facilities and service in the field of mental health.

4. Plans and exercises staff supervision over departmental operations and activities in mental health; recommends criteria for regulation of departmental facilities used for psychiatric purposes, and participates in the development of such criteria for application in the community; interprets policies of the Director of Public Health as they apply to operating procedures within the Bureau of Mental Health; supervises the direction of all divisions and special units of the Bureau of Mental Health.

5. Develops and institutes plans with respect to organizational structure of the Bureau of Mental Health; assigns missions and functions to elements of the Bureau of Mental Health; distributes resources (personnel, supplies, funds, etc.) to secure efficient accomplishment of the mission of the Bureau of Mental Health.

6. Conducts or cooperates in occasional and regularly scheduled surveys of the community resources; engages in efforts to improve methods of measuring the size and scope of mental health problems; assists in establishing systems for collecting statistics and calculating indices of morbidity and mortality related to psychiatric diseases; initiates and promotes ecologic research in matters of mental health and psychiatric illness.

7. Provides consultative services on mental health matters to the following: health protecting agencies, both public and private; agencies maintaining community peace and order; groups of persons whose professional activities involve them in mental health consultation; community organizations and specialized agencies.

8. Engages in the mental health education of the community, independently or collaboratively with any other appropriate agency, governmental or private, utilizing various media and techniques of information and communication.

9. Establishes and maintains departmental activities in training and education in psychiatry and related disciplines; cooperates with training agencies to increase the supply and improve the quality of professional personnel in psychiatry and allied fields.

(b) *Adult Mental Health Division:*

1. Operates or furnishes clinical services for the diagnosis, classification, treatment and rehabilitation of persons eighteen (18) years of age and over.

2. Establishes policies and procedures pertaining to screening, intake, diagnosis, treatment and disposition of cases accepted for service.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, treated, referred and terminated, and reports these data to the Chief of the Bureau.

4. Provides consultative services on mental health matters to various agencies in the community.

5. Collaborates with departmental and community agencies in public information programs.

6. Conducts research and training operations.

7. Plans and develops programs to fill gaps in existing services, and to provide needed service where it does not now exist, recommending these to the Chief of the Bureau.

(c) *Alcoholic Rehabilitation Division:*

1. Operates or furnishes clinical services for the diagnosis, treatment and rehabilitation of alcoholics, and furnishes diagnostic and consultative services to Municipal Court.

2. Establishes policies and procedures pertaining to screening, intake, diagnosis, treatment and disposition of cases accepted for service.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, treated, referred and terminated, and reports these data to the Chief of the Bureau.

4. Provides consultative services on mental health matters to various agencies in the community.

5. Collaborates with departmental and community agencies in public information programs.

6. Conducts research and training operations.

7. Plans and develops programs to fill gaps in existing services, and to provide needed service where it does not now exist, recommending these to the Chief of the Bureau.

(d) *Legal Psychiatric Services Division:*

1. Operates or furnishes clinical services to provide diagnosis and consultation in assisting the following officers in carrying out their duties: (1) the judges of the District Court in criminal cases, and the probation officers of the District Court; (2) the probation officers of the Municipal Court; (3) such officers of the D.C. Juvenile Court as the judge thereof shall designate; (4) such officers of the Department of Corrections as the director thereof shall designate; and (5) the Board of Parole of the District.

2. Establishes policies and procedures pertaining to screening, intake, diagnosis, treatment and disposition of cases accepted for service.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, treated, referred and terminated, and reports these to the Chief of the Bureau.

4. Provides consultative services on mental health matters to various agencies in the community.

5. Collaborates with departmental and community agencies in public information programs.

6. Conducts research and training operations.

7. Plans and develops programs to fill gaps in existing services and to provide needed service where it does not now exist, recommending these to the Chief of the Bureau.

(e) *Child Guidance Division:*

1. Operates or furnishes clinical services for the diagnosis, classification, treatment and rehabilitation of children under eighteen (18) years of age and their parents.

2. Establishes policies and procedures pertaining to screening, intake, diagnosis, treatment and disposition of cases accepted for service.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, treated, referred and terminated, and reports these data to the Chief of the Bureau.

4. Provides consultative services on mental health matters to various agencies in the community.

5. Collaborates with departmental and community agencies in public information programs.

6. Conducts research and training operations.

7. Plans and develops programs to fill gaps in existing services and to provide needed service where it does not now exist, recommending these to the Chief of the Bureau.

(f) *Special Services Division:*

1. Operates or furnishes clinical services for the diagnosis and evaluation of persons referred by various District agencies which are responsible for the care, education or custody of such persons and develops a plan of management for such persons.

2. Establishes policies and procedures pertaining to screening, intake, diagnosis, evaluation and plans for management of cases accepted for service.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, treated, referred and terminated, and reports these data to the Chief of the Bureau.

4. Provides consultative services on mental health matters to various agencies in the community.

5. Collaborates with departmental and community agencies in public information programs.

6. Conducts research and training operations.

7. Plans and develops programs to fill gaps in existing services and to provide needed service where it does not

now exist, recommending these to the Chief of the Bureau.

(g) *Pediatric Psychiatry Division*.—In accordance with policies and procedures developed jointly by the Chief of the Bureau of Mental Health and the Chief of the Bureau of Maternal and Child Health, under the professional and administrative supervision of the Chief of the Bureau of Mental Health, operates in facilities used by, and functioning within the framework of, the Maternal and Child Health programs.

1. Provides through the Bureau of Mental Health or other resources psychiatric and other mental health consultation and clinical diagnostic services for maternity patients, infants and pre-school children, school children and actual or potentially handicapped and crippled children, including the mentally retarded; makes recommendations to the Bureau of Maternal and Child Health Staff concerning management, treatment or referral elsewhere for psychiatric treatment; participates in the management and treatment of cases in the Maternal and Child Health setting, as appropriate.

2. Develops policies and establishes procedures pertaining to screening, intake, diagnosis, treatment and disposition of cases accepted for services, including the establishment of appropriate records.

3. Establishes and maintains clinical and statistical records of patients admitted, diagnosed, evaluated, treated, referred and terminated and reports these data to the Chief of the Bureau of Mental Health and the Chief of the Bureau of Maternal and Child Health.

4. Collaborates with departmental and community agencies in public information programs.

5. Conducts research and training activities.

6. Evaluates gaps in existing services and makes recommendations to provide needed services to the Chief of the Bureau of Mental Health.

(Subpart "K" was added by order No. 58-2083, Dec 23, 1958.)

PART IV

Anatomical Board.—a. There is established under the direction and control of the Director of Public Health, an Anatomical Board, consisting of members as prescribed in the District of Columbia Code. The Director of Public Health will serve as ex-officio Chairman.

b. Members of the Anatomical Board, during the period of their tenure, except the ex-officio Chairman, shall hold no full-time office for which compensation is paid from District of Columbia funds and shall serve without compensation.

c. The Anatomical Board shall meet at the call of the Chairman but it shall meet no less than three times each year.

d. The Anatomical Board shall perform all functions as set forth in the District of Columbia Code for the existing Anatomical Board.

PART V

Transfers.—a. There are hereby transferred to the Department of Public Health all functions and positions, including all duties, powers, and authorities of all officers and employees, of the Health Department, Gallinger Municipal Hospital, Glenn Dale Sanatorium, and the Anatomical Board.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in (a) of this Part, are hereby transferred to the Department of Public Health, except that funds made available from the annual fees for licenses for the manufacture and sale of alcoholic beverages to carry out the purposes of Public Law 347 of the 80th Congress, as amended, shall be expended only for the purposes of such Act.

PART VI

Abolition of existing agencies.—a. In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Glenn Dale Sanatorium, includ-

ing the office of the head thereof, Anatomical Board, including the office of the chairman thereof, Health Department, and Gallinger Municipal Hospital, are hereby abolished, effective June 30, 1953, and immediately re-created as previously constituted, including all the functions, duties, powers, and authorities vested therein. Coincident with the re-creation of said Sanatorium and Board, the positions of the heads of such Sanatorium and Board are also re-established.

b. The re-created Glenn Dale Sanatorium including the office of the head thereof, Health Department, and Gallinger Municipal Hospital, shall be abolished automatically on August 15, 1953.

PART VII

Repeal of previous Orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—The provisions of this Order, with the exception of Part VI (a) herein, shall become effective on and after August 15, 1953.

PART IX

a. *Dangerous Drug Control Act for the District of Columbia*.—Pursuant to the provisions of Title I of Public Law 764, 84th Congress, 2d session, approved July 24, 1956, the following authorities are hereby delegated to the Director of Public Health:

1. Upon being satisfied that there is probable cause to believe that a person within the District of Columbia is a drug user, to order in writing any law enforcement officer of the District of Columbia to bring that person before the person who is to conduct a preliminary examination as referred to in 2 herein, in accordance with section 4 (a) of said Act.

2. To conduct a preliminary examination of any person for the purpose of determining evidence of drug addiction, in accordance with section 4 (a) of said Act.

3. To cause any person, upon finding sufficient evidence of drug addiction, to be placed in District of Columbia General Hospital for an examination, in accordance with section 4 (a) of said Act.

4. To assign two qualified physicians, one of whom is a psychiatrist, to examine said person referred to in 1, 2 and 3 herein, in accordance with section 5 (a) of said Act.

5. To conduct a physical examination of each patient, for two years after his release, at such times and places as he is required to report, and if determined that the patient is a drug user, to initiate appropriate action to cause him to be placed into an institution, in accordance with the provisions of said Act.

6. Upon the failure of any patient to report as required in section 11 (a) of said Act, to notify the United States Attorney for the District of Columbia, in accordance with section 11 (b) of said Act.

b. District of Columbia General Hospital is designated as the place each patient shall be detained, in accordance with section 8 (a) of said Act.

c. Pursuant to the provisions of the Dangerous Drug Act for the District of Columbia, it shall be the responsibility of the Director of Public Health to develop and propose to the Board of Commissioners, after coordination with and concurrence by the Board of Pharmacy and other affected departments, rules and regulations, including additions, changes, and amendments thereto, for the administration and enforcement of said Act. (Added by Order dated Dec. 13, 1956, No. 56-2541.)

PART X

a. *Amendments to Uniform Narcotic Drug Act*.—Pursuant to the provisions of Title III of Public Law 764, 84th Congress, 2d session, approved July 24, 1956, the following authority is hereby delegated to the Director of Public Health:

1. To assign a physician to examine any person arrested as a vagrant to determine whether there is evidence of narcotic drug usage in accordance with sections 16a (d) and 16a (e) of the Uniform Narcotic Drug Act approved June 20, 1938, as amended by this title.

2. To serve as agent for the Commissioners in receiving from the Surgeon General, in accordance with section 302 (a) of this title, the name, address and such other pertinent information as may be useful in the rehabilitation to society of any person who voluntarily submitted himself for treatment.

b. Any place of detention within the District of Columbia Government that is suitable for the detention of a person charged with a crime, except such facilities used exclusively for the examination or treatment of the criminally insane, is designated as the place where any person, under arrest as a vagrant, shall be confined in accordance with sections 16a (c) and 16a (h) of the Uniform Narcotic Drug Act approved June 20, 1938, as amended by this title. (Parts IX and X were added by Order dated Aug. 23, 1956, No. 56-1717.)

REORGANIZATION ORDER NO. 58.—DEPARTMENT OF PUBLIC WELFARE

Reorg. Ord. No. 58, G. F. No. 3-000, June 30, 1953, as amended July 31, 1953 and Aug. 19, 1954, ordered that:

PART I

Department of Public Welfare.—a. There is established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director.

b. The present Director of Public Welfare and the present Deputy Director of Public Welfare, under the existing Board of Public Welfare, are hereby appointed to the positions of Director and Deputy Director, respectively, of the new Department of Public Welfare.

PART II

Delegation of Authority.—a. The Director shall have full authority over such Department and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration; *except that*, the power to consent to surgical operations on wards other than in certain types of emergency situations to be specified by the Director, and to consent to adoption of wards whose parents have been permanently deprived of custody by court order, and to discharge wards when desirable prior to the expiration of their period of commitment, and the power to make final decision on appeals and grievances presented by clients in connection with actions taken by components of the Department, shall be limited to the Director of Public Welfare, or, in his absence, the Acting Director of Public Welfare. *Further*, the authority vested hereinbelow to execute agreements with the U. S. Department of Agriculture for the acceptance and distribution of surplus food commodities donated by such Department may be exercised only by the Director of Public Welfare and, in the latter's absence, by the Deputy Director of Public Welfare. (Last sentence added by order No. 57-1027, dated June 6, 1957.)

b. All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

c. All functions, powers, and authorities specified in Part IV herein which are now delegated to and performed and exercised by the existing Board of Public Welfare are delegated to and shall be performed and exercised by the new Department of Public Welfare. All other functions, powers, and authorities which are now delegated to and performed and exercised by the existing Board of Public Welfare shall revert to the Board of Commissioners, unless otherwise ordered by said Commissioners.

PART III

Purpose.—The Department of Public Welfare is established for the purposes of planning, implementing, and directing public welfare programs which will most effectively fulfill the community's obligations to its underprivileged, and performing certain other allied functions, including the furnishing of institutional care as provided by law.

PART IV

Organization and Functions.—There are established in the Department of Public Welfare the following organiza-

tional components, responsible for the performance of the functions outlined.

a. Office of the Director.—

1. Develops and proposes to the Board of Commissioners major programs, policies, and regulations designed to carry out the District's obligations and responsibilities under the welfare statutes.

2. Coordinates welfare services and resources of the District of Columbia with those of voluntary groups and organizations to provide the maximum of coordinated service to the community.

3. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all public welfare programs, services, and operations of the District of Columbia, including the capital improvements program for the Department.

4. Advises and assists the Board of Commissioners on all matters relating to the planning and execution of the public welfare program.

5. Develops, presents, and justifies departmental budget estimates, including estimates of costs and reimbursements.

6. Consents to operations for wards and adoption of wards whose parents have been permanently deprived of custody by court order.

7. Authorizes discharge of wards when desirable prior to the expiration of their period of commitment.

8. Makes final decisions on appeals and grievances presented by clients in connection with actions taken by components of the Department.

9. Executes agreements with the U. S. Department of Agriculture for the acceptance and distribution of surplus food commodities donated by that Department, such agreements to be approved by the Board of Commissioners, and directs and supervises the Department of Public Welfare's activities as the District of Columbia Government's distributing agency for such commodities. (Added by order No. 57-1027, dated June 6, 1957.)

b. Office of Business Administration.—

1. Plans, directs, coordinates, and administers a comprehensive program for, and furnishes staff training to, personnel engaged in the Department's accounting, budget, procurement, administrative services, personnel, and management improvement activities.

2. Where feasible and desirable plans and effects consolidation of and exercises supervision over business administration activities of the Divisions and institutions of the Department.

3. Supervises and administers the collection and resources investigation activities, other than those incidental to the establishment of eligibility for benefits, of the Department.

4. Plans, directs, coordinates, and administers management improvement activities; reviews on a continuing basis, in cooperation with the heads of the Divisions and institutions of the Department, record systems, procedures, and other administrative activities.

5. Maintains cost accounts and budgetary controls.

6. Keeps accounts of, and makes payments for, services rendered by the Attorney General to boys committed by the Juvenile Court of the District of Columbia to the National Training School for Boys.

7. Collaborates and maintains liaison with the staff offices of the Department of General Administration.

c. Office of Consultant Services.—

1. Develops treatment standards and programs for the Divisions and institutions of the Department.

2. Develops technical in-service training programs for the staff of the Department.

3. Investigates applicants for licenses to operate child placing agencies in the District of Columbia and assists such agencies to meet applicable standards.

4. Furnishes advice and assistance to private child care institutions which provide custody for children charged to the care of the Department.

5. Provides services to the Landlord and Tenant Branch of the Municipal Court for the District of Columbia in situations, other than legal, which require adjustments between tenants and landlords.

6. Plans, directs, and coordinates all research and statistical activities of the Department.

7. Recruits, trains, and coordinates voluntary services made available to the Department by individuals and organizations of the community.

8. Conducts special staff studies to advise the Director of the Department in matters of program formulation and execution.

d. Public Assistance Division.—

1. Provides financial aid to individuals who are in need and who are determined to be eligible according to the basic statutes and regulations.

2. Works with other agencies, both public and private, in the community toward the rehabilitation of needy individuals.

3. Administers the sums payable to the District of Columbia under the provisions of the Federal Security Act, as amended, and District appropriations for old age assistance, aid to the needy blind, aid to dependent children, aid to the totally disabled, and general public assistance. In this connection:

a. Receives applications from residents of the District of Columbia who are in financial need.

b. Investigates such applications to determine eligibility for assistance in accordance with existing statutes and regulations, and to determine extent and nature of assistance required.

c. Re-investigates cases not less than once annually, and more often as required, to determine continuing eligibility of recipients.

d. Seek to effect the physical and economic rehabilitation of recipients so that they may become self-supporting citizens.

e. Provides for the purchase of medical services for persons found eligible for public assistance either directly by the Department of Public Welfare, or by payment to the Department of Public Health for such services as mutually agreed upon by said Departments. (Subparagraph e added by order No. 57-3109, dated Nov. 12, 1957; eff. Oct. 1, 1957.)

4. Provides transportation to places of legal residence of indigents who are not legal residents of the District of Columbia and arranges for their food and shelter pending transportation.

5. Provides for burial of indigent residents of the District of Columbia.

6. Accepts volunteer aid in effecting the rehabilitation of public assistance recipients.

e. Child Welfare Division.—

1. Provides services to children committed to its custody or guardianship by the Juvenile Court.

2. Investigates circumstances surrounding children handicapped by reason of dependency, neglect, or in danger of becoming delinquent and provides services for the protection and care of such children, working with parents and other responsible relatives in an effort to conserve satisfactory home life.

3. Safeguards the welfare of children born out of wedlock by providing services for their mothers in caring for and obtaining support for such children.

4. Makes suitable provision for reception and care of children who are temporarily homeless.

5. Provides for care of children committed to the Department by placement in foster homes or private institutions under contracts negotiated and signed by the Director of Public Welfare, or such institutions of the Department as the child's welfare may require.

6. Visits all wards as often as may be required to safeguard their welfare.

7. Accepts volunteer aid in the placement and supervision of children assigned to its care.

8. Verifies allegations contained in petitions for adoption, thoroughly investigates circumstances to ascertain whether the child is a proper subject for adoption and whether home of petitioner is a suitable one for the child, and reports its findings and recommendations to the Court having jurisdiction of the matter in those cases where the Court has issued an Order of Reference to the Department of Public Welfare.

(As amended by order No. 56-1964, dated Sept. 25, 1956.)

f. Home for the Aged and Infirm.—

Provides care, including the furnishing of in-patient medical services in the D. C. Village infirmary, of aged and infirm residents of the District of Columbia for whom such services are not available in their own or responsible relatives' homes. Receives applications for, and makes determinations regarding eligibility of applicants for admittance to the District of Columbia Village in accordance with existing statutes and regulations. (First sentence amended by order No. 57-3109, dated Nov. 12, 1957; eff. Oct. 1, 1957.)

g. Children's Center.—

To consist of the following components:

1. *Office of Superintendent:* Provides supervision for all components of Children's Center and furnishes hospital and medical services to such components.

2. *District Training School:* Provides separate custody, maintenance and care of persons not over 45 years of age at time of commitment who are committed as feeble-minded by the United States District Court for the District of Columbia, including parole supervision for those released.

3. *Maple Glen School:* Provides institutional care, custody, and training, both academic and vocational, for younger or less difficult children assigned to unit because of neglect, dependency or a violation of law or regulation.

4. *Cedar Knoll School:* Provides institutional care, custody, and training, both academic and vocational, for older or more difficult children assigned to unit because of neglect, dependency, or violation of law or regulation. (Subdivision "g" under Part IV was deleted and new subdivision as above set out substituted by Order No. 56,111, dated June 7, 1956. By the same Order subdivision "i" was deleted and subdivisions j, k, and l were redesignated as i, j and k.)

h. Receiving Home for Children.—

Detains and provides custody, maintenance, and care for children under 18 years of age arrested by the law enforcement agencies on charge of offense against any law enforced in the District of Columbia, pending Juvenile Court Action.

i. Junior Village.—

Provides temporary custody, care, and training for dependent and neglected children assigned to its care.

j. Municipal Lodging House.—

Provides shelter and food on a temporary basis for men who are stranded in Washington without funds for their immediate maintenance.

k. Temporary Home for Soldiers and Sailors.—

Provides shelter and food on a temporary basis for veterans who have come to Washington from other parts of the Nation to apply for such benefits as hospitalization, domiciliary care, pensions, and claims for compensation.

l. Surplus Foods Division.—

In accordance with the plan of operation approved by the Board of Commissioners with respect to surplus food commodities donated by the U. S. Department of Agriculture, orders, receives, stores, distributes, and maintains necessary records pertaining to surplus food commodities donated by the U. S. Department of Agriculture. (Added by order No. 57-1027, dated June 6, 1957.)

PART V

Transfers.—a. There are hereby transferred to the Department of Public Health all functions of, and all funds appropriated to, the Board of Public Welfare for the care and transportation of the insane, whether in St. Elizabeths Hospital or in facilities of the District of Columbia Government, and the following positions of the Interstate Services Section of the Board of Public Welfare:

Social Worker, GS-8, 25-4-1x.

Social Worker, GS-5, 25-4-2.

Social Worker, GS-5, 25-4-3x.

Social Worker, GS-5, 25-4-4.

Social Worker, GS-5, 25-4-5x.

Clerk-Typist, GS-3, 25-4-6.

Clerk-Typist, GS-3, 25-4-7.

All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds,

available or to be made available, relating to these positions and functions are hereby transferred to the Department of Public Health.

b. There are hereby transferred to the Department of Public Welfare all functions and positions, including all duties, powers, and authorities of all officers and employees under the existing Board of Public Welfare, its agencies and its institutions. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions so transferred are hereby transferred to the Department of Public Welfare.

PART VI

Abolition of existing Agencies.—a. In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Board of Public Welfare, including the offices of the head, members, offices, and employees thereof, is hereby abolished, effective June 30, 1953, and immediately re-created as previously constituted, including all the functions, duties, powers, and authorities vested therein. Coincident with the re-creation of said Board, the positions of the head, members, officers, and employees thereof, are re-established and present incumbents are reappointed thereto.

b. The re-created Board of Public Welfare, described in paragraph a of this Part, shall be abolished automatically on August 15, 1953.

PART VII

Repeal of previous Orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—The provisions of this Order, with the exception of Part VI (a) herein, shall be effective on and after August 15, 1953.

REORGANIZATION ORDER NO. 59.—BOARDS, COMMISSIONS AND COMMITTEE

Reorg. Ord. No. 59, G. F. 47:2100, June 30, 1953, as amended July 17, 1953, September 15, 1953, and December 10, 1953, ordered that:

PART I

Department of Occupations and Professions.—There is established under the direction and control of the Board of Commissioners a Department of Occupations and Professions. The Department shall consist of the following-named boards, commissions, and committee, an Office of the Director, and an Office of Administration:

Board of Accountancy.

Board of Barber Examiners for the District of Columbia.

Board of Dental Examiners.

Board of Examiners and Registrars of Architects.

Steam and Other Operating Engineers' Board.

Board of Examiners of Veterinary Medicine.

Board of Optometry.

Board of Pharmacy.

Board of Podiatry Examiners.

Commission on Licensure to Practice the Healing Art in the District of Columbia.

District of Columbia Board of Cosmetology.

District of Columbia Board of Registration of Professional Engineers.

District Boxing Commission.

Electrical Board.

Motion Picture Operators' Board.

Nurses' Examining Board.

Plumbing Board.

Real Estate Commission.

Undertakers' Committee.

PART II

Purpose.—The Department of Occupations and Professions is established for the purpose of performing those

functions of the District Government concerned with licensing, registering, and regulating certain professions and occupations, in order to protect the public from incompetent and unfair practices and to protect qualified men from the competition of unqualified and unethical persons.

PART III

Powers and authorities.—a. Each of the aforementioned boards, commissions, and committee is vested with the full powers and authorities which it has heretofore possessed in the licensing and regulating of the respective professions and occupations, including the power and authority, to the extent heretofore possessed, to grant, suspend, and revoke licenses and registrations, and shall continue to possess such powers and authorities. Further, the Steam and Other Operating Engineers' Board, the Electrical Board, the Motion Picture Operators' Board, the Plumbing Board, and the Undertakers' Committee are hereby authorized to exercise the powers heretofore vested in the Board of Commissioners relating to the licensing of the respective occupations, including the power and authority to grant, suspend, and revoke licenses and registrations, in accordance with applicable laws, rules, and regulations, including the limitations thereof, provided further that the Undertakers' Committee may, in its discretion, request that the Department of Public Health conduct an investigation and report its findings to the Committee before the giving of notice to a licensee of a hearing on any complaint or charges which might result in suspension or revocation of the license; and provided further that in any case where Public Health considerations are present, the Undertakers' Committee shall advise the Director of Public Health of the nature of the complaint. *Except that:*

b. The Department of Occupations and Professions shall be supervised by a Director who shall have full administrative authority over such Department and personnel assigned thereto.

c. The authority of the Director of the Department shall be limited to the functional areas of administration, fiscal, and housekeeping.

d. The funds and fees derived from receipts for licensing, registering, and regulating the professions and occupations shall be used to administer the respective functions for which collected.

e. Each board, commission, and committee shall recommend to the Board of Commissioners rules and regulations relating to the technical and professional requirements governing the licensing and regulating of the particular profession or occupation.

f. The Department Director shall recommend to the Board of Commissioners rules and regulations relating to the administrative, fiscal and supply, space and other housekeeping functions of the Department.

g. The following specific actions shall be undertaken jointly by the Director, Department of Occupations and Professions, and the heads and/or members, respectively, of the boards, commissions, and committee:

(1) Meet at least semi-annually, at one or another of the regularly scheduled meetings of the boards, commissions and committee, to discuss common problems and the objectives and programs of the Department and how effectively these are being met; to discuss in detail their budgetary and staff needs; and to inform them as to the distribution of costs and allocation of funds and related financial and accounting data pertaining to the operation of the Department. In all cases where a board, commission, or committee is in disagreement on a budgetary, staff or allotment matter with the Director, the Director shall arrange for the Head of the board, commission or committee to appear before the Budget Office and the Board of Commissioners to discuss such disagreement.

(2) Collaborate regarding travel requirements and attendant budget requests and fund allocations.

(3) Collaborate in periodically reviewing and revising the fee structure.

(4) Collaborate in coordinating the assignment and use, and developing and maintaining the effectiveness of

the investigative staff for the purpose of insuring that the individual needs and requirements of the boards, commissions, and committee in connection with investigations are adequately and satisfactorily being met.

(5) Collaborate in coordinating the assignment and use, and developing and maintaining the effectiveness of the administrative and clerical staff for the purpose of insuring that the individual needs and requirements of the boards, commissions, and committee in connection with administrative matters are adequately and satisfactorily being met.

(Subpar. (g) added Aug. 25, 1959, by order No. 59-1510.)

PART IV

Functions.—Functional responsibilities are assigned as follows, subject to the limitation imposed in Parts I and III, hereof. The general intent in the assigning of these functions is that the Office of the Director and the Office of Administration will perform substantially all administrative, fiscal, and housekeeping activities for all Boards, and that technical and professional functions and responsibilities shall be exercised by the respective Boards.

a. Boards, Commissions, and Committee.

1. Develops and proposes to the Commissioners programs, policies, standards, regulations, and procedures governing the professional and technical aspects of licensing and regulating the respective professions and occupations.

2. Develops, administers, and grades examinations, utilizing the Office of Administration for all clerical duties not performed by the members of the Boards. [In addition, when so desired by the Boards, the Office of Administration, to the extent of its capabilities, will assist them in developing and grading examinations.]

3. Determines eligibility of candidates for entrance to a profession or occupation, and approves and signs all certificates as to professional or occupational qualifications of successful candidates.

4. Conducts hearings relating to eligibility, reciprocity, suspension, revocation, or denial of license or registration, and renders decisions based upon the findings.

5. Advises and assists the Commissioners on professional and technical matter of the respective boards, commissions, and committee.

6. Collaborates with the Department Director in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of over-all operations.

b. Office of the Director.

1. Develops and proposes to the Commissioners programs, policies, regulations, and procedures governing the administrative, fiscal, and housekeeping functions of the Department.

2. Plans, directs, coordinates, and supervises the administrative activities of the Department.

3. Advises and assists the Commissioners on administrative, fiscal, and housekeeping matters of the Department.

4. Collaborates with the boards, commissions, and committee in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of over-all operations.

c. Office of Administration.

1. Processes all applications, correspondence, and other material referred to the Office for administrative processing.

2. Performs the clerical, fiscal, and business functions of the Department.

3. As required by the boards, and subject to their direction and approval, conducts investigations and inspections relating to the professions and occupations, and submits reports of such investigations and inspections to the appropriate boards, commissions, or committee for their consideration and final action.

4. Performs all clerical duties concerned with developing, administering, and grading examinations except those performed by Board members, and, as requested by the Boards, assists them in developing and grading examinations to the extent of its capacities.

5. Assists the Department Director on administrative, fiscal, and housekeeping matters pertaining to the operations of the Department.

PART V

Appointments to and membership on Boards, Commissions, and Committee.—The members of the present boards, commissions, and committee are hereby reappointed to the newly created boards, commissions, and committee. Members shall continue to serve for terms of office, new members shall be appointed, qualification requirements shall be determined, officers shall be chosen, and compensation shall be paid in accordance with statutes and regulations applicable to the boards, commissions, and committee prior to their abolition by the Board of Commissioners on June 30, 1953 * * * except that any person shall be eligible for appointment upon the Board of Podiatry who is a citizen of the United States and who has been, for five years next preceding his appointment, in the active and reputable practice of podiatry in the District of Columbia, . . . and except that in the event of any vacancy occurring in the membership of the Board of Dental Examiners in any manner other than by expiration of time the Board of Commissioners shall fill such vacancy by an appointment for the unexpired term. (The last exception clause in first par. added July 29, 1958, by order No. 58-1179.) (The phrase following "1953" was added by order No. 57-1226, dated June 27, 1957.)

The Finance Officer, D. C. (formerly the Assessor, D. C.) shall continue to serve, ex-officio, as Chairman of the Real Estate Commission. The Chief of the Property Tax Division, Finance Office, is hereby appointed to serve as alternate member for the Finance Officer on the Real Estate Commission. (This par. added by order No. 58-990, June 24, 1958.)

PART VI

Policies, rules, and regulations.—All policies, rules, and regulations under which the boards, commissions, and committee have heretofore been operating which are not inconsistent with this Order shall remain in effect and shall be followed until specifically superseded by actions of the Board of Commissioners, or by actions of the professional or occupational Boards, or of the Department Director, pursuant to authorities granted herein.

PART VII

Transfers to new department.—a. There are hereby transferred to the Department of Occupations and Professions all functions and positions of the following-named organizations and their subordinate agencies, including the duties, powers, and authorities of all officers and employees assigned thereto:

Board of Accountancy.

Board of Barber Examiners for the District of Columbia.

Board of Dental Examiners.

Board of Examiners and Registrars of Architects.

Board of Examiners of Steam and Other Operating Engineers.

Board of Examiners of Veterinary Medicine.

Board of Optometry.

Board of Pharmacy.

Board of Podiatry Examiners.

Commissioners on Licensure To Practice the Healing Art in the District of Columbia.

District of Columbia Board of Cosmetology.

District of Columbia Board of Registration of Professional Engineers.

District Boxing Commission.

Electrical Examining Board.

Motion Picture Operators' Examining Board.

Nurses' Examining Board.

Plumbing Board.

Real Estate Commission.

Undertakers' Examining Committee.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in (a) of this Part are

hereby transferred to the Department of Occupations and Professions.

c. The organizations and their subordinate agencies listed in (a) of this Part and the duties, powers, and authorities of all officers and employees assigned thereto, shall continue to function as heretofore constituted, but as constituent agencies of the Department under the administrative supervision of the Director, until such time as the Department Director, working in close collaboration with the respective boards, commissions, and committee, shall, subject to the limitations imposed in Parts I and III hereof, effectuate the actual transfer of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, to each respective board, commission, or committee; *provided, however*, that such transfer be effective for at least one of these boards, commissions, or committee on October 15, 1953 and that the transfer of the others be accomplished on a scheduled basis between that date and February 15, 1954.

d. The following named boards and committee shall be provided with administrative, fiscal, and housekeeping services by the Departments indicated until such time as these services are assumed by the Department of Occupations and Professions:

Board of Examiners of Steam and other Operating Engineers.	} Department of Licenses and Inspections.
Electrical Examining Board-----	
Motion Picture Operators' Examining Board.	
Plumbing Board-----	} Department of Public Health.
Undertakers' Examining Committee----	

e. The Department Director is assigned primary responsibility, in collaboration with the various professional and occupational boards, for effectuating the consolidation indicated in (c), above, in an orderly manner so as to minimize disruptions to present operations.

PART VIII

Abolition of Agencies.—The organizations and their subordinate agencies listed in Part VII (a) of this Order, including the offices of the heads thereof, are hereby abolished.

PART IX

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Amendment to Reorganization Order No. 59.—Reorganization Order No. 59, as amended, is hereby further amended, effective immediately, in that the date September 15, 1953, as it appears in Part I of that Order, shall read instead October 15, 1953.

PART XI

Effective date.—The provisions of this Order, with the exception of Part X above which becomes effective immediately, shall become effective on and after October 15, 1953.

REORGANIZATION ORDER NO. 60.—PUBLIC HEALTH ADVISORY COUNCIL

Reorg. Ord. No. 60, G. F. No. 6-101, July 28, 1953, ordered:

There is hereby created in the Government of the District of Columbia a permanent committee of citizens representing the community at large to be known as the Public Health Advisory Council.

PART I

Purpose.—To increase citizen participation, lay and professional, in the municipal government's public health program and to act in an advisory capacity to the Commissioners and the Director of Public Health on public health matters affecting the general public.

PART II

Functions.—It is the intent of the Board of Commissioners that the Public Health Advisory Council shall,

in general, assist and advise them and the Director of Public Health in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies and statutes or changes in existing policies or statutes, affecting the public health program.

2. Advise on community health needs and desires and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Public Health with those of community groups, associations, and professional organizations.

4. Interpret the activities of the Department of Public Health to the public.

5. Aid in stimulating public interest, understanding and participation of the community in solving public health problems.

6. Study community health needs and resources and assist in developing budgetary needs of the Department of Public Health.

7. Evaluate, upon request of the Board of Commissioners, the qualifications of candidates for the position of the Director of Public Health and make appropriate recommendations.

8. Study and evaluate the operations and activities of the Department of Public Health and make appropriate recommendations with respect to changes which may appear desirable.

PART III

Composition.—To consist of 9 members (residents of the District of Columbia for a period of at least 3 years immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective on, and insight into, the public health needs and desires of the community. The Commissioners may invite nominations from medical, dental, nursing, health engineering, and civic organizations of the community or the public at large. At least three, but not more than four, members shall be members of the professions cited. There shall be no ex-officio members and no members representing any special interest. Members shall hold no full or part-time office for which compensation is paid from funds of or federal grants to the District of Columbia.

PART IV

Term of office.—To be fixed at three years except for initial appointments, as follows: of the nine persons first appointed as members of said Council, three shall be appointed for one year, three for two years, and three for three years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. Members shall be eligible for reappointment.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, -----, having been duly appointed by the Board of Commissioners as a member of the Public Health Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Public Health Advisory Council shall determine its own organization and perfect its own

rules of procedure. The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regular scheduled meetings. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or majority of the Council membership.

PART VIII

Administration.—The Director of Public Health shall assist the Council in matters of administration of the Council and shall provide it with necessary stenographic, clerical, and housekeeping services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be met from funds provided for the administration of District affairs.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners and to the Director of Public Health and may be released at such time and under such circumstances as the Board of Commissioners or the Council may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after September 15, 1953.

REORGANIZATION ORDER NO. 61.—PUBLIC WELFARE ADVISORY COUNCIL

Reorg. Ord. No. 61, G. F. No. 3-103, July 28, 1953, ordered that:

There is hereby created in the Government of the District of Columbia a permanent committee of citizens, representing the community at large, to be known as the Public Welfare Advisory Council.

PART I

Purpose.—To increase citizen participation in the municipal government's public welfare program and to act in an advisory capacity to the Commissioners and the Director of Public Welfare on public welfare matters affecting the general public.

PART II

Function.—It is the intent of the Board of Commissioners that the Public Welfare Advisory Council shall in general advise and assist them and the Director in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies and statutes, or changes in existing policies and statutes, affecting the public welfare program.

2. Advise on community welfare needs and desires and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Public Welfare with those of community groups and organizations.

4. Interpret the activities of the Department of Public Welfare to the public.

5. Aid in stimulating public interest, understanding, and participation of the community in solving public welfare problems.

6. Study community public welfare needs and resources and assist in developing budgetary needs of the Department of Public Welfare.

7. Evaluate, upon request by the Board of Commissioners, the qualifications of candidates for the position of Director of Public Welfare and make appropriate recommendations.

8. Study and evaluate the operations and activities of the Department of Public Welfare and make appropriate recommendations with respect to changes which may appear to be desirable.

PART III

Composition.—To consist of twelve members (residents of the District of Columbia for a period of at least 3 years immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to

provide in the aggregate a maximum degree of perspective on, and insight into, the public welfare needs and desires of the community. The Commissioners may from time to time invite civic groups of the community or the public at large to nominate persons for membership on the Council. There shall be no ex-officio members, and no members representing any special interest. Members shall hold no full or part-time office for which compensation is paid from funds of or grants to the District of Columbia. (The composition of the Council was increased from "nine" to "twelve" members by order dated Sept. 29, 1955.)

PART IV

Term of office.—To be fixed at three years except for initial appointments, as follows: of the nine persons first appointed as members of said Council, three shall be appointed for one year, three for two years, and three for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. Members shall be eligible for reappointment.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Public Welfare Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Public Welfare Advisory Council shall determine its own organization and perfect its own rules of procedure. The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

PART VIII

Administration.—The Director of Public Welfare shall assist the Council in matters of administration of the Council and shall provide it with the necessary stenographic, clerical, and housekeeping services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be met from funds provided for the administration of District affairs.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners and to the Director of Public Welfare and may be released at such time and under such circumstances as the Board of Commissioners or the Council may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after August 15, 1953.

ORGANIZATION ORDER NO. 101 WILL BE FOUND AT § 29-935

ORGANIZATION ORDER NOS. 102 AND 103 WILL BE FOUND AT § 5-617

ORGANIZATION ORDER NO. 104.—DEPARTMENT OF VOCATIONAL REHABILITATION

OCTOBER 28, 1954.

Establishment.—Pursuant to the authority contained in P. L. 565, 83d Congress, it is hereby ordered:

PART I

Department of Vocational Rehabilitation.—There is established under the direction and control of a Commissioner, a Department of Vocational Rehabilitation headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such powers delegated in Part IV of this Order, as, in his judgment, are warranted in the interest of efficiency and good administration. All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Vocational Rehabilitation is established for the purpose of planning, implementing, and carrying out in the most efficient and economical manner those functions and services which are necessary to rehabilitate physically handicapped individuals, including the blind, residing in the District of Columbia so that they may prepare for and engage in remunerative employment to the extent of their capabilities, pursuant to the provisions of P. L. 565, 83d Congress.

PART III

Organization.—There shall be established in the Department of Vocational Rehabilitation as many organizational components and positions with such duties and responsibilities as the Director, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART IV

Functions.—The Department shall be responsible for performance of the functions outlined below:

a. Develops, proposes, and executes programs the ultimate purpose of which is to rehabilitate physically handicapped residents of the District to the point where they can be remuneratively employed, and secures such employment for them.

b. Coordinates activities of the Department of Vocational Rehabilitation with those of other District of Columbia organization components responsible for related functions, such as the Department of Public Health, Veterans' Service Center, and Department of Public Welfare.

c. Develops, presents, and justifies budget estimates of the Department.

d. Advises and assists the Board of Commissioners on all matters relating to vocational rehabilitation of the physically handicapped.

e. Maintains fiscal, statistical, and other records as may be necessary to permit the effective operation of the Department.

f. Carries out such functions of the District of Columbia Government as such Government may undertake under the Randolph-Sheppard Vending Stand Act, 20 U. S. C., Section 107, as amended.

g. Makes determination for any individual, in accordance with Section 221 of the Social Security Act, as amended, as to whether or not he is under a disability, the day such disability began, and the day on which such disability closes. Paragraph g was added by order dated August 18, 1955, and provided that:

"This Order shall be effective as of the date specified in agreement entered into between the Government of the District of Columbia and the Secretary of the Department of Health, Education, and Welfare, authorizing the Department of Vocational Rehabilitation to make such determinations of disability."

PART V

Appointment of contracting officers:

a. The Director of the Department of Vocational Rehabilitation is hereby appointed a Contracting Officer for the District of Columbia subject to all laws, rules, and regulations and such instructions as the Commissioners may from time to time give and with the limitation that the contracts he may enter into and administer are restricted to those providing for (1) services of a

professional, technical and scientific nature provided by institutions or individuals to physically handicapped persons participating in the programs of the Department; or (2) such appliances or other specialized items as may be peculiar to the vocational rehabilitation program.

b. The Assistant Director of the Department is hereby appointed Alternate Contracting Officer and is authorized to exercise all the authority vested by paragraph A of this Part in the Contracting Officer for whom he is named alternate, subject to all limitations upon the powers of such Contracting Officer, during the disability or other absence from duty of such Contracting Officer and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed.

c. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Office of the Corporation Counsel and in the case of each contract in excess of \$25,000, subject also to approval of the executed formal contracts by the Board of Commissioners.

PART VI

Personnel, property, and records.—All personnel, property, and records determined by the Director of the Bureau of the Budget to relate to the services provided by the new Department established herein, and transferred to the District of Columbia Government, are assigned to such Department.

PART VII

Effective date.—This Order shall be effective on and after November 1, 1954.

PART VIII

Vocational evaluation center:

a. There is hereby established, under the direction and control of the Director, Department of Vocational Rehabilitation, a Vocational Evaluation Center for the purpose of providing vocational evaluation of severely disabled clients, patients and applicants, who are and have been District of Columbia residents for one year preceding admission, to assist said Department in planning and providing for the needs of such individuals so that they can be returned to a productive life in their homes and in the community. The authority to operate the Center shall continue through June 30, 1959, and shall be exercised in accordance with applicable laws, rules and regulations.

b. There shall be established in the Center such evaluation shops, facilities and services and such positions, as the Director of the Department shall deem necessary.

c. The Director of the Department of Vocational Rehabilitation is authorized to use District funds appropriated to the Department of Vocational Rehabilitation as may be available and necessary, and Federal matching funds for fiscal years 1958 to 1959, to provide for rental of space to house the Vocational Evaluation Center, including the re-location of the existing Medical-Vocational Rehabilitation Center to another site, and for the payment of related expenses such as personal services, supplies and equipment that are necessary for the operation of the Center. Said Director is further authorized, on behalf of clients, patients and applicants determined to be in need of evaluation as provided herein, to apply for necessary medical services from the Department of Public Health and necessary social work services from the Department of Public Welfare, and said Departments respectively are hereby authorized to furnish such necessary services.

d. Title to and responsibility for maintenance and repair of all property, equipment and supplies presently assigned to the Pilot Demonstration Medical-Vocational Evaluation Project shall remain with the Department of Vocational Rehabilitation.

Effective on or about April 1, 1958, the Pilot Demonstration Medical-Vocational Evaluation Project, established by Commissioners' Order No. 55-1240 dated June 30, 1955, shall be disestablished and said Order shall be thereby repealed in its entirety. (Part VIII added by order No. 57-3147, dated Nov. 19, 1957.)

ORGANIZATION ORDERS NOS. 105-108 WILL BE FOUND UNDER REORGANIZATION ORDER NO. 54

ORGANIZATION ORDER NO. 109.—ESTABLISHING POSITION OF ASSISTANT ENGINEER COMMISSIONER FOR URBAN RENEWAL AND ESTABLISHING AN OFFICE OF URBAN RENEWAL

PART I

MAY 31, 1955.

Policy.—The Government of the District of Columbia, working in close liaison and cooperation with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, and other interested agencies, in accordance with the District of Columbia Redevelopment Act of 1945, as amended, and the Housing Act of 1954, dedicates itself, and such of its resources and facilities as are available for such purpose, to the prevention and the elimination of slums and other unhealthful or unsafe living conditions in the District of Columbia.

PART II

Assistant Engineer Commissioner for Urban Renewal.—One of the Assistant Engineer Commissioners is designated Assistant Engineer Commissioner for Urban Renewal.

a. Purpose.—The purpose of designating an Assistant Engineer Commissioner for Urban Renewal is to provide the Board of Commissioners with a single official responsible to them for carrying out the District of Columbia Government's functions in the planning and conduct of the urban renewal and slum prevention program.

b. Functions.—The Assistant Engineer Commissioner for Urban Renewal, working in close coordination with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, and other organizations, shall take the initiative for the Board of Commissioners in:

1. Development of plans and schedules for the execution of the overall urban renewal and slum prevention program, and submittal of such plans and schedules together with necessary supporting data to the Board of Commissioners for their review and approval.

2. Integration of all operations of all departments and agencies of the District of Columbia Government, including those pertaining to the public works program and the maintenance of working liaison with public agencies, as they relate to the urban renewal and slum prevention program.

3. Presentation and interpretation of views and objectives of the Board of Commissioners to other public agencies having roles in the program.

4. Presentation and interpretation of the views and objectives of the Board of Commissioners to civic, neighborhood, and business organizations, and the maintenance of continuous, harmonious relationships with such organizations in policy and operational aspects of the program, with the objective of securing coordinated community action as required.

5. Continuing review and evaluation of: (1) the urban renewal and slum prevention program and its planning, (2) the procedures and techniques employed in its execution, (3) the sufficiency of codes and regulations, and (4) the adequacy of organizational relationships; and the development and presentation to the Board of Commissioners of recommendations for such action as may be required to correct deficiencies in the program, speed up its operations, or otherwise to improve its effectiveness.

PART III

Office of Urban Renewal.—There is established under the direction and control of the Assistant Engineer Commissioner for Urban Renewal, an Office of Urban Renewal.

a. Purpose and functions.—The Office of Urban Renewal is established for the purpose of advising and assisting, and shall perform functions necessary to advise and assist, the Assistant Engineer Commissioner for Urban Renewal in:

1. Development of plans and schedules for the execution of the overall urban renewal and slum prevention program.

2. Integration of all operations of all departments and agencies of the District of Columbia Government, includ-

ing those pertaining to the public works program, and maintenance of working liaison with public agencies, as they relate to the urban renewal and slum prevention program.

3. Presentation and interpretation of the views and objectives of the Board of Commissioners to other public agencies having a role in the program.

4. Relations with civic, neighborhood, and business organizations with respect to the policy aspects of the program and of community action as required.

5. Evaluation of the program and its planning, of the procedures and techniques employed in its execution, of the sufficiency of the codes and regulations, and of the effectiveness of the organizational arrangements; and preparation and submittal of recommendations to the Board of Commissioners as to action required to correct deficiencies in the program, speed up its operations and improve its effectiveness.

The senior employee of such office, shall assist the Assistant Engineer Commissioner for Urban Renewal in carrying out the latter's overall administrative responsibilities and shall serve as Executive Secretary to the Urban Renewal Council and to the Urban Renewal Operations Committee.

b. Personnel and funds.—Personnel and funds shall be provided for the Office of Urban Renewal within the limits of available appropriations which may properly be used for such purpose.

PART IV

Effective date.—This Order shall be effective on and after May 31, 1955.

ORGANIZATION ORDER NO. 110 (AMENDED).— COMMISSIONERS' URBAN RENEWAL COUNCIL

SEPTEMBER 4, 1958.

Order No. 58-1485.

Ordered: That Organization Order No. 110, dated May 31, 1955, as amended, establishing an Urban Renewal Council, is hereby repealed in its entirety and all appointments to said Council are hereby terminated.

Preface: Urban Renewal has as its objective the revitalization of the worn out, blighted and deteriorated sections of the city. Accomplishment of this objective is sought through the acceleration of such physical changes to private as well as public property as will result in improved residential, commercial, or industrial development of the city. Urban Renewal is a programmed approach embracing the combined techniques of city planning, redevelopment, rehabilitation, prevention, conservation and code enforcement, plus such other public or private measures which will stimulate the physical development, growth and well being of the community. It is dependent upon the combined efforts of government and private enterprise for maximum effectiveness, and upon joint governmental and citizen leadership for harmonious and successful implementation. Governmental leadership within the District of Columbia is vested in the Board of Commissioners. It is the intent of this order to establish an official citizen body which will work with the Commissioners and provide citizen leadership to mobilize the cooperation, support, participation and assistance of the community in the renewal of the District of Columbia.

PART I

Commissioners' Urban Renewal Council.—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Commissioners' Urban Renewal Council.

PART II

Purpose and functions.—The purpose of the Urban Renewal Council is to advise and assist the Board of Commissioners in Urban Renewal matters and to provide citizen leadership in the physical renewal and preservation of the District of Columbia. In accomplishing its purpose the Council shall:

1. Advise and assist the Commissioners as appropriate to improve, implement or expedite the urban renewal program.

2. Upon request, render advice or assistance to the other governmental agencies involved in District of Columbia Urban Renewal activities in:

- a. Overcoming obstacles and difficulties within the community which impede urban renewal progress.
- b. Resolving problems which exist or arise through lack of citizen or business support and understanding.
- c. Obtaining or improving legislative, administrative, planning, or enforcement measures which will result in more efficient and expeditious urban renewal progress.
- d. Developing budgetary requirements for urban renewal.

3. Maintain liaison and contact with the Commissioners to insure unity of effort on the part of government and the community on urban renewal matters.

4. Exercise leadership within the community to:

a. Encourage and stimulate the broadest possible community and citizen interest, understanding and participation in urban renewal.

b. Mobilize the combined support, cooperation and assistance of residents and businessmen as deemed necessary or desirable to implement or expedite the urban renewal program for the District of Columbia.

5. Report annually to the Commissioners on progress through community participation in urban renewal and ways and means of maintaining or improving this progress.

PART III

Composition and membership.—1. The Commissioners' Urban Renewal Council shall consist of seven members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. Members shall hold office for terms of 2 years, except that of those first appointed 4 members shall be appointed to serve for 2 years and 3 members shall be appointed to serve for 1 year. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

2. If, in the opinion of the Council, it is considered necessary or desirable to augment the effort of the Council in order to carry out its work, the Council may request the Commissioners to designate other citizens as affiliate members of the Council. Affiliate members may serve on committees and take part in such proceedings as determined by the Council but shall have no vote in Council deliberations.

PART IV

Organization.—1. The Board of Commissioners shall designate the Chairman of the Council.

2. The Council shall otherwise determine its own organization, including the establishment of auxiliary committees.

3. The Council shall determine its own rules of procedure.

4. Staff assistance for the Council will be furnished by the Office of Urban Renewal.

PART V

Oath of office.—Members of the Commissioners' Urban Renewal Council shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Urban Renewal Council of the Government of the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States, that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Effective date.—This order shall be effective on and after September 18, 1958.

ORGANIZATION ORDER NO. 111.—URBAN RENEWAL OPERATIONS COMMITTEE

PART I

MAY 31, 1955.

a. *Establishment.*—There is hereby established in the Government of the District of Columbia an Urban Renewal Operations Committee.

b. *Functions.*—The Urban Renewal Operations Committee shall serve as the Commissioners' principal medium to develop, for their consideration, uniform and consistent official policies in matters affecting the urban renewal program, and to coordinate and integrate the operations and activities of the departments and agencies concerned in the planning and execution of urban renewal projects.

c. *Composition and membership:*

1. The Urban Renewal Operations Committee shall consist of the Assistant Engineer Commissioner for Urban Renewal, who shall serve as Chairman, and members appointed by the Board of Commissioners, one from each of the following organizations:

National Capital Planning Commission.
National Capital Housing Authority.
Redevelopment Land Agency.
Board of Education.
Board of Recreation.
Department of General Administration.
Department of Highways.
Department of Licenses and Inspections.
Department of Public Health.
Department of Public Welfare.
Department of Sanitary Engineering.
Department of Vehicles and Traffic.
Fire Department.
Zoning Office.
Metropolitan Police Department.
Office of the Corporation Counsel.

2. Members of the Urban Renewal Operations Committee shall be appointed by the Board of Commissioners and shall serve at the pleasure of the Board of Commissioners. The senior employee of the Office of Urban Renewal shall serve as Executive Secretary of the Committee.

d. *Organization.*—The Urban Renewal Operations Committee shall determine its own rules of procedure and may, if it so desires, establish and fill such additional officer positions, from its membership, as it may consider appropriate.

PART II

District of Columbia Slum Prevention and Rehabilitation Committee.—The Slum Prevention and Rehabilitation Committee established in C. O. No. G. F. 5-700, L. S. 5691-B-4, dated October 1, 1953, as amended, is hereby abolished.

PART III

Rescission.—C. O. No. G. F. 5-700, L. S. 5691-B-4, dated October 1, 1953, as amended, is hereby rescinded.

PART IV

Effective date.—This Order shall be effective on and after May 31, 1955.

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

PART I

AUGUST 11, 1955.

a. *Establishment.*—The Board of Appeals and Review, established in Part VIII of Reorganization Order No. 55, as amended, is hereby reconstituted as described below.

b. *Composition and membership:*

1. The Board of Appeals and Review shall consist of seven members and five alternate members. The members of the Board shall elect one of their number to serve as Chairman.

2. Five of such members and three of such alternate members shall be residents of the District of Columbia who are not employed by the District of Columbia or the Government of the United States. These shall be known

as the public members and alternate members of the Board. At least three of such public members and at least two of such public alternate members shall be persons who own real property in the District of Columbia.

3. Two of such members and two of such alternate members shall be regular full-time employees of the District of Columbia Government. These shall be known as the District Government members and alternate members of the Board. No District Government member or alternate member shall sit in an appeal from any action in which he earlier participated to the extent of making a recommendation or a decision.

4. Public alternate members shall substitute for public members of the Board in their absence and District Government alternate members shall substitute for District Government members of the Board in their absence.

Subject to the foregoing provisions, any four of the members or their alternates present and voting shall constitute a quorum; no action shall be taken without a majority vote. (Last par. added Oct. 27, 1955, order No. 55-2080; eff. Oct 31, 1955.)

5. Members and alternate members shall be appointed by the Board of Commissioners and such members and alternate members shall be subject to removal at the discretion of the Board of Commissioners. Of the initial appointments to said Board, two members and two alternate members shall be appointed to serve until June 30, 1956; two members and one alternate member shall be appointed to serve until December 31, 1956; two members and one alternate member shall be appointed to serve until June 30, 1957; and one member and one alternate member shall be appointed to serve until December 31, 1957. Each term of membership after the initial terms established above shall be for a period of two years: *Provided*, That in the event the appointment of a member or alternate is made at a time subsequent to the day following the date on which the next preceding term ends, the term of such member or alternate shall expire two years subsequent to the date of termination of the preceding term: *Provided further*, That each member and alternate shall serve until his successor has been appointed and has qualified: *And provided still further*, That any member or alternate member appointed to fill an unexpired term shall be appointed only for the unexpired portion of such term.

6. Appointments of members and alternate members shall take into account their qualifications, experience, and community interests so as to bring to bear upon the deliberations of the Board, to the extent that the Commissioners may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction of dwellings, finance, public health, social service, and law.

7. Members and alternate members of the Board of Appeals and Review shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member (an alternate member) of the Board of Appeals and Review, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member (an alternate member) of said Board to the best of my ability without fear or favor; and that I will well and faithfully discharge said duties, so help me God."

c. Functions.

The Board of Appeals and Review shall consider and make final determinations on appeals from decisions in the following types of cases, where error in such decisions is alleged by the appellants:

1. Appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Code.

2. Appeals submitted by applicants for licenses, permits, and certificates, from actions taken by responsible officials of the Department of Licenses and Inspections with respect to denial of a license, permit, or certificate; by persons with respect to suspension or revocation of such licenses, permits, or certificates currently in effect; and by persons directed to act or to refrain from acting,

in accordance with inspectional or regulatory requirements (excluding dangerous and unsafe structures and excavations).

3. Appeals from actions taken by the Fire Chief, the Director of Public Health, the Chief of Police, or the Director of Licenses and Inspections, or any designated agent of each such official, under the provisions of the general regulations governing the removal of fences and sheds as promulgated by the Board of Commissioners on January 7, 1954.

4. Such other matters as the Board of Commissioners may assign to the Board of Appeals and Review for appeals consideration.

The Board of Appeals and Review, in its consideration of appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Code, may in its discretion grant variances as authorized by such Housing Code and shall, in addition, consider and make final decisions on cases under consideration for the granting of a variance that may be referred without final determination by the Director or Deputy Director of Licenses and Inspections.

The Board of Appeals and Review shall hear oral argument when requested by any one or more of the parties to an appeal.

The activities of the Board of Appeals and Review shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D. C. Code, 1951 ed., sec. 1-237) and the Board's Hearing Officer(s) shall possess the powers vested in the Commissioners by that Act.

The Board of Appeals and Review shall formulate rules governing its own procedures, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to it: *Provided, however*, That such rules shall be subject to review and approval by the Corporation Counsel as to their legal sufficiency.

Where the Board has not decided an appeal from the denial of a license application by the end of the license year for which the application was made and the appellant has made timely application for a license for the new license year, the pending appeal shall not become moot at the end of the license year for which the earlier application was made, but shall be deemed also to be an appeal from the denial of an application for a license for the new license year. If an oral hearing has already been had on the appeal, no further oral hearing shall be required, but a further oral hearing shall be provided at the request of any of the interested parties who may have additional evidence to offer. (This par. added, Oct. 27, 1955, order No. 55-2080; eff. Oct. 31, 1955.)

Upon application by any person aggrieved by any action, decision, or ruling made by the Director of Licenses and Inspections in the administration of the act providing for the regulation and licensing of pawnbrokers, the Board of Appeals and Review shall review and make a final determination affirming, setting aside, or modifying such action, decision, or ruling. In cases of denial, revocation, or suspension, such review shall be based upon the record and without a hearing by the Board. (Last par. added by order No. 56-2007, dated Oct. 2, 1956.)

d. *Organization.*—There are hereby established under the Board of Appeals and Review the following full-time positions:

1. One or more Hearing Officers appointed by the Board of Commissioners, one of whom shall serve in addition as Executive Secretary of the Board of Appeals and Review. Each Hearing Officer shall exercise the following functions:

(a) Conduct all hearings on matters coming before the Board.

(b) Upon completion of each hearing, summarize the facts in the case and draft appropriate recommendation for action by the Board.

(c) Notify appellant and Director, Department of Licenses and Inspections, of his findings of fact and conclusions of law based on the hearing and the evidence introduced, and of his recommendation, and ask whether either desires to present oral argument before the Board.

(d) Forward to the Board: findings of fact and conclusions of law in the case, all documents and exhibits introduced in evidence, recommendation for action by the Board, and statement as to whether any of the parties to the proceeding desires opportunity for oral argument before the Board. Upon request by the Board, furnish appropriate number of copies of transcript of hearing.

(e) When requested by the applicant or licensee, conduct a hearing on any proposed denial, revocation, or suspension of a pawnbroker's license and prepare thereon findings of fact, conclusions of law, and recommendations for disposition by the Director of Licenses and Inspections. Not less than five days (exclusive of Saturdays, Sundays, and legal holidays) before forwarding to the Director such findings, conclusions, and recommendations, together with all documents and exhibits introduced in evidence, furnishes to the applicant or licensee, or his attorney of record, a copy of such findings, conclusions, and recommendations, together with a letter advising that the applicant or licensee may, within such five (5) day period, or any extension thereof which may be granted by the Director, file with the Director any exceptions or objections he may have to such findings, conclusions, or recommendations. (Added by order dated Oct. 2, 1956, No. 56-2007.)

2. One or more hearing stenographers who shall perform secretarial duties incident to the Board's operations and shall be responsible for the taking and transcribing of hearing testimony as required.

PART II

Rescission.—Commissioners' Order No. 54-530, dated March 9, 1954, is rescinded in its entirety.

PART III

Effective date.—This Order shall be effective on and after September 1, 1955. (Part VIII of reorganization order No. 55, reconstituted as above and described as Organization Order No. 112.)

ORGANIZATION ORDER NO. 113.—PROFESSIONAL VOCATIONAL REHABILITATION ADVISORY COUNCIL [SEE ALSO ORDER NO. 104]

PART I

SEPTEMBER 8, 1955.

a. *Establishment.*—There is hereby established in the government of the District of Columbia a permanent committee of citizens to be known as the Professional Vocational Rehabilitation Advisory Council.

b. *Functions.*—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Vocational Rehabilitation, with respect to the establishment of fee schedules for medical services provided to the Department's clients; to interpret medical aspects of the vocational rehabilitation program for interested citizens; to provide the leadership necessary for members of medical and related professional groups to understand the program; to make such recommendations as it may deem appropriate with respect to medical matters affecting the program; and to provide adequate in-service staff training in medical understanding for the staff of the Department.

c. *Composition and membership:*

1. The Professional Vocational Rehabilitation Advisory Council shall consist of 15 members in addition to three ex-officio members who shall be the Director, Department of Public Health, or his designee, and the two medical consultants to the Director, Department of Vocational Rehabilitation. Members shall be chosen from the medical and dental professions and from other professions, such as nursing and physical therapy, which are directly related to the field of medicine. (The last sentence of this paragraph was amended to read as above set out by order dated Oct. 25, 1955.)

2. Members shall be appointed by the Board of Commissioners after consideration of nominations made by the Director, Department of Vocational Rehabilitation, and such other sources as they may consider appropriate. Each member shall be subject to removal at the discretion of the Board of Commissioners. All appointments will

be for three-year terms of office with the following exceptions:

(a) Initially the Board of Commissioners will appoint five members to terms expiring June 30, 1956; five members to terms expiring June 30, 1957; and five members to terms expiring June 30, 1958.

(b) If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

(c) Members appointed to unexpired terms shall serve only the unexpired portions of such terms.

d. *Compensation.*—Members shall serve without compensation.

e. *Organization.*—At the initial meeting in each fiscal year, following the appointment of new members, the Council shall elect from among its members such officers as it deems necessary. All meetings of the Council will be on call of the Chairman, who shall call at least one meeting during each quarter of each fiscal year.

PART II

Effective date.—This order shall be effective on and after September 8, 1955.

ORGANIZATION ORDER NO. 114.—GENERAL VOCATIONAL REHABILITATION ADVISORY COUNCIL [SEE ALSO ORDER NO. 104]

PART I

SEPTEMBER 8, 1955.

a. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the General Vocational Rehabilitation Advisory Council.

b. *Functions.*—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Vocational Rehabilitation, on policy and operational aspects of the vocational rehabilitation program of the District of Columbia. The Council shall make such recommendations as it may deem appropriate with respect to matters affecting the vocational rehabilitation program; keep appropriate District officials informed of the reactions of those segments of the public affected by or interested in the vocational rehabilitation program; and provide leadership among organizations and the public at large to create understanding of the program and to enlist cooperation in its implementation.

c. *Composition and membership:*

1. The General Vocational Rehabilitation Advisory Council shall consist of 12 members in addition to the chairman of the Professional Vocational Rehabilitation Advisory Council, who shall be an ex-officio member. Members shall be chosen on the basis of their experience, reputation, or demonstrated interest in the field of vocational rehabilitation of the physically handicapped.

2. Members shall be appointed by the Board of Commissioners after consideration of nominations made by the Director, Department of Vocational Rehabilitation and such other sources as they may consider appropriate. Each member shall serve until his successor has been duly appointed. Each member shall be subject to removal at the discretion of the Board of Commissioners. All appointments will be for three-year terms of office with the following exceptions:

(a) Initially the Board of Commissioners will appoint four members to terms expiring June 30, 1956; four members to terms expiring June 30, 1957; and four members to terms expiring June 30, 1958.

(b) If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

(c) Members appointed to unexpired terms shall serve only the unexpired portions of such terms.

d. *Compensation.*—Members shall serve without compensation.

e. *Organization.*—At the initial meeting in each fiscal year, following appointment of new members, the Council shall elect from among its members such officers as it

deems necessary. All meetings of the Council shall be on call of the chairman, who shall call at least one meeting during each quarter of each fiscal year.

PART II

Effective date.—This order shall be effective on and after September 8, 1955.

ORGANIZATION ORDER NO. 115.—REFRIGERATION AND AIR CONDITIONING BOARD

PART I

a. *Establishment.*—There is hereby established within the Department of Occupations and Professions a Refrigeration and Air Conditioning Board.

b. *Composition and membership.*

1. The Refrigeration and Air Conditioning Board shall consist of three members and three alternate members.

2. Two of such members and two of such alternate members shall be persons who have been actively engaged in the District of Columbia for at least five years next preceding their appointment in the business of refrigeration and air conditioning and who have received a license in accordance with Commissioners' Order No. 55-2029, dated October 18, 1955. Of these,

a. One member and one alternate member shall be a licensed Refrigeration and Air Conditioning Contractor and such alternate member shall substitute for such member in his absence; and

b. One member and one alternate member shall be a licensed Master Refrigeration and Air Conditioning Mechanic or Master Refrigeration and Air Conditioning Mechanic, Limited, and such alternate member shall substitute for such member in his absence. *Except that:*

Such members and alternate members appointed to the Board initially established under the provisions of this Organization Order need only be qualified to receive, rather than have already received, a license as specified hereinabove. The members and alternate members referred to in this paragraph shall be known as the public members and alternate members of the Board.

3. The third member and the third alternate member shall be regular full-time employees of the District of Columbia Government who by experience and training in the field of refrigeration and air conditioning are deemed by the Director of Licenses and Inspections and the Board of Commissioners to be fully competent to serve as the District Government members of the Board. These shall be known as the District Government member and alternate member of the Board, and such alternate member shall substitute for such member in his absence.

c. *Appointments and tenure.*

1. Members and alternate members shall be appointed by the Board of Commissioners.

2. Of the initial appointments to said Board, one member and one alternate member shall be appointed to serve until September 30, 1956; one member and one alternate member shall be appointed to serve until September 30, 1957; and one member and one alternate member shall be appointed to serve until September 30, 1958.

3. Each term of membership after the initial terms established above shall be for a period of three years: *Provided*, That in the event the appointment of a member or alternate member is made at a time subsequent to the day following the date on which the next preceding term ends, the term of such member or alternate member shall expire three years subsequent to the date of termination of the preceding term; *Provided further*, That each member and alternate member shall serve until his successor has been appointed and has qualified; and, provided still further, that any member or alternate member appointed to fill an unexpired term shall be appointed only for the unexpired portion of such term.

4. Members and alternate members of the Refrigeration and Air Conditioning Board shall take an oath of office as follows:

"I, -----, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reserva-

tion or purpose of evasion; that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

d. *Removal of members.*—Members and alternate members shall be subject to removal by the Board of Commissioners at its discretion.

e. *Compensation for Board members.*—Public members and alternate members of the Board shall serve without compensation.

f. *Individuality of interest.*—Not more than one public member or alternate member of the Refrigeration and Air Conditioning Board shall have a financial interest in or be employed by the same person, firm, or corporation engaged in the business of refrigeration and air conditioning.

PART II

Purpose.—The Refrigeration and Air Conditioning Board is established for the purpose of performing those functions of the District of Columbia Government concerned with the technical and professional aspects of licensing and registering persons, firms, and corporations engaged within the District of Columbia in the business of refrigeration and air conditioning, or in installing, maintaining, repairing, and replacing refrigeration and air conditioning apparatus, equipment, appliances, systems, or parts thereof, in accordance with the provisions of the Refrigeration and Air Conditioning Licensing Regulations promulgated by Commissioners' Order No. 55-2029, dated October 18, 1955, in order to protect the public from incompetent and unfair practices and to protect qualified men from the competition of unqualified and unethical persons.

PART III

Assignment of functions.—a. The Refrigeration and Air Conditioning Board shall perform the following functions in accordance with the provisions of the Refrigeration and Air Conditioning Licensing Regulations of the District of Columbia:

1. Develops and proposes to the Commissioners programs, policies, standards, regulations, and procedures governing the professional and technical aspects of licensing and registering persons, firms, and corporations engaged within the District of Columbia in the business of refrigeration and air conditioning, or in installing, maintaining, repairing, and replacing refrigeration and air conditioning apparatus, equipment, appliances, systems, or parts thereof.

2. Determines eligibility of applicants for licensing as Refrigeration and Air Conditioning Contractor, Master Refrigeration and Air Conditioning Mechanic, and Master Refrigeration and Air Conditioning Mechanic, Limited; approves or disapproves the applications for such licenses; and certifies to the Director of Occupations and Professions the applications of those who successfully meet the requirements for licensing.

3. In accordance with applicable laws, rules, and regulations, suspends or revokes the following classes of licenses and registrations: Refrigeration and Air Conditioning Contractor, Master Refrigeration and Air Conditioning Mechanic, and Master Refrigeration and Air Conditioning Mechanic, Limited.

4. Develops, administers, and grades examinations in conjunction with the Office of Administration of the Department of Occupations and Professions which will render such clerical services and assistance in developing and grading examinations as may be feasible.

5. Conducts hearings, as necessary, relating to eligibility, suspension, revocation, or denial of license or registration.

6. Collaborates with the Director of Occupations and Professions in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of operations of the Department and of the Board.

b. The Office of the Director and the Office of Administration of the Department of Occupations and Professions shall fulfill functional responsibilities and shall perform the divers administrative, fiscal, and housekeeping activities specified in Part IV of Reorganization Order No. 59 as amended.

PART IV

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, repealed.

PART V

Effective date.—This Order shall be effective on and after November 1, 1955.

ORGANIZATION ORDER NO. 116.—INTER-DEPARTMENTAL STATISTICAL COMMITTEE

ESTABLISHMENT

There is hereby established in the Government of the District of Columbia a committee to be known as the Inter-Departmental Statistical Committee.

Functions.—Reviews and appraises overall District Government statistical programs and, at the request of a department or agency head, reviews and appraises individual statistical programs and, as appropriate, comments upon and makes recommendations and suggestions for improvements and changes to the officials concerned.

Serves in an advisory capacity to the Commissioners and department and agency heads in connection with the development and use of standards, methods and techniques for collecting, summarizing, analyzing and interpreting statistical data relating to the work performed by such departments and agencies, both collectively and individually.

Serves as a forum, among the several District Government departments and agencies, for the transfer, exchange and coordination of statistical information and data that might be of interest to and serve the needs of a multiple number of such departments and agencies, including the opportunity, through inter-departmental arrangements and agreements, of obtaining statistical data in such form as to meet specific needs and requirements.

Develops and formalizes standards for adaptation and use in connection with the preparation and publication of statistical data released to the public.

Serves in an advisory capacity to District of Columbia and Federal Government agencies, private and professional organizations, and business and industrial firms, and other similar groups that are desirous of obtaining information of a statistical nature in connection with municipal organization, functions, and activities.

Encourages and promotes, among the several District of Columbia departments and agencies, standardization in timing and scheduling the collection of statistical data to avoid duplication of effort, grouping and subdividing of census tracts to provide for greater uniformity and consistency in amassing and collecting population data, and similar matters.

Composition.—The committee shall be composed of the following District of Columbia employees:

[The names of the members of the committee are omitted.]

The following officials also are invited to participate actively as members of the Committee:

[The names of the officials are omitted.]

The Inter-Departmental Committee also shall include such additional members as District Government department and agency heads, from time to time, are requested by the Committee to designate as their representatives, including those department and agency heads not under full administrative jurisdiction of the Board of Commissioners as well as public and private agencies and officials.

Organization.—The Committee shall determine its own internal organization, including the designation of a chairman and the establishment of subcommittees for purposes of performing the functions assigned to the Committee.

ORGANIZATION ORDER NO. 117.—COMMISSIONERS' ADVISORY COUNCIL ON FIRE PREVENTION

OCTOBER 4, 1956.

Establishment.—There is hereby established in the Government of the District of Columbia a permanent council of citizens and District officials to be known as the Commissioners' Advisory Council on Fire Prevention.

PART I

Purpose.—The purpose of the Advisory Council is to increase community participation in the District Government's fire prevention program and to act in an advisory capacity to the Commissioners and the Fire Chief on fire prevention matters affecting the general public.

PART II

Function.—It is the intent of the Board of Commissioners that the Advisory Council shall in general advise and assist the Commissioners and the Fire Chief in the following respects:

1. Advise and assist in coordinating the fire prevention program of the Fire Department with the activities of schools, community groups, and public and private organizations.

2. Interpret the fire prevention program of the Fire Department to the public.

3. Assist in stimulating community interest, understanding, and participation in fire prevention by sponsoring activities such as public demonstrations and discussions, newspaper, radio and television publicity, fire prevention contests in schools, stores, churches, and similar organizations, and local observance of Fire Prevention Week.

4. Study and make appropriate recommendations with respect to proposals for new policies and statutes, or changes in existing policies and statutes, affecting the fire prevention program of the Fire Department.

5. Advise on community fire prevention needs and the formulation and execution of programs necessary to effective control of fire, including assistance in developing budgetary requirements of the Fire Department.

PART III

Composition.—The Advisory Council shall consist of ten members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. Members shall serve for terms of two years, or until their successors have been appointed; they shall be eligible for reappointment and shall serve without compensation.

PART IV

Organization.—The Council shall determine its own organization including the establishment of auxiliary committees, perfect its own rules of procedure, and designate its own officers, except that for the first year the Commissioners shall designate one member to serve as Chairman. Secretarial services shall be furnished by the Fire Department.

PART V

Oath of Office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Advisory Council on Fire Prevention, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

ORGANIZATION ORDER NO. 118.—EMERGENCY AMBULANCE SERVICE

AUGUST 27, 1957.

Order No. 57-1667.

Ordered: There is hereby established in the District of Columbia an Emergency Ambulance Service, to consist of emergency ambulance vehicles, equipment and crews of the Fire Department and the Department of Public Health, and emergency ambulance units furnished by private voluntary hospitals which agree to observe the "Operating Instructions for Emergency Ambulances" (including present and future amendments) adopted by the Board of Commissioners, D. C. The Fire Department shall have coordinating supervision of the Emergency Ambulance Service, including the operation of a central dispatching

service for emergency ambulances and the operational control of Department of Public Health emergency ambulance vehicles, equipment and crews assigned to the Service. The Fire Department may enter into agreements with other District departments to obtain reimbursement for services rendered such departments in connection with the Fire Department's coordination, operation, and supervision of the Emergency Ambulance Service. Participation by the Department of Public Health in the Emergency Ambulance Service will continue for the balance of the 1958 fiscal year.

This Order shall take effect on and after September 6, 1957.

ORGANIZATION ORDER NO. 119.—EMERGENCY AMBULANCE SERVICE ADVISORY COMMITTEE

AUGUST 27, 1957.

Order No. 57-1669.

Ordered: There is hereby established in the District of Columbia a committee of citizens and District officials to be known as the Emergency Ambulance Service Advisory Committee.

PART I

Purpose.—The Emergency Ambulance Service Advisory Committee shall in general advise and assist the Commissioners and the Fire Chief in matters affecting the District of Columbia Emergency Ambulance Service and shall serve as an advisory group on coordination of the activities of the various governmental and non-governmental organizations having an interest in the continued efficient operation of the Emergency Ambulance Service.

PART II

Functions.—The functions of the Emergency Ambulance Service Advisory Committee shall be as follows:

a. To study and make recommendations to the Board of Commissioners and to the Fire Chief on any matters which the Fire Chief or the Commissioners may refer to the Committee, or on matters of the Committee's own choosing, concerning the Emergency Ambulance Service. Any member of the Committee may, on behalf of the organization which he represents, request the Committee Chairman to include on the Committee agenda such matters concerning the Emergency Ambulance Service as his organization may desire to have brought to the attention of the Committee.

b. To review and make recommendations to the Fire Chief regarding changes in the present "Operating Instructions for Emergency Ambulances" proposed by the Fire Chief or by members of the Committee.

c. To develop plans and recommendations regarding the future needs of the District of Columbia for emergency ambulance service. Such planning activities may include but not be limited to planning for:

1. Development, as needed, of additional hospital and other District emergency service and facilities not now a part of the Emergency Ambulance Service.

2. Coordination and use of hospitals, emergency ambulance and other emergency facilities, both governmental and non-governmental, throughout the Washington Metropolitan area.

3. Coordination of the Emergency Ambulance Service with the facilities of the various Federal hospitals in the Washington Metropolitan area.

4. Consideration of inspection, regulation and use by the District Government of private ambulances used in ambulance service.

d. To survey the experience of other cities and their metropolitan areas in regard to emergency medical and ambulance service and to study and develop recommendations for possible improvements in the Emergency Ambulance Service suggested by the experience of these other cities.

PART III

Composition.—The following departments and agencies of the District Government shall designate one representative each to serve on the Emergency Ambulance Service Advisory Committee; this representative shall have the authority to speak for his department or agency:

Fire Department.

Police Department.

Office of the Coroner.

Department of Public Health.

Board of Police and Fire Surgeons.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital, the Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C. each may designate one representative to the Committee. (Sentence amended June 23, 1959, order No. 59-1122.) Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Organizations designating representatives to the Committee as stated above shall also designate alternate members to serve in the absence of the regular members.

Committee members and alternates shall serve without compensation and until the organization which they represent notifies the Committee Chairman of the appointment of their successor. It is the intent of the Commissioners that District departments and agencies and non-governmental organizations entitled to membership on the Committee shall keep current their designation of their representatives and alternates on this Committee.

PART IV

Chairman.—The Chairman of the Emergency Ambulance Service Advisory Committee shall be appointed by the President of the Board of Commissioners from the membership of the Committee and shall serve until his successor is appointed.

PART V

Organization.—The Emergency Ambulance Service Advisory Committee shall determine its own organization, including the establishment of subcommittees, establish its own rules of procedure, and designate its officers except for the position of Chairman. Secretarial service and administrative support shall be provided by the Fire Department. All meetings of the Committee shall be at the call of the Chairman who shall call at least one meeting during each six-month period. Committee members shall have the right to request a meeting of the Committee at any time when the organization which they represent has a matter which it desires to bring to the attention of the Committee.

PART VI

Reports.—The Emergency Ambulance Service Advisory Committee, within 30 days after the end of each fiscal year, shall report to the Board of Commissioners on their activities during the preceding year. In this report the Committee shall make such recommendations to the Commissioners as they consider appropriate relative to the Emergency Ambulance Service and to the future operations of the Committee.

PART VII

Effective date.—This Order shall be effective on and after September 6, 1957.

ORGANIZATION ORDER NO. 120.—CHARITABLE SOLICITATION ADVISORY COUNCIL

NOVEMBER 14, 1957.

Order No. 57-3116.

Pursuant to authority contained in Pub. L. 85-87, 85th Congress, it is hereby ordered:

PART I

CHARITABLE SOLICITATION ADVISORY COUNCIL

a. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Charitable Solicitation Advisory Council.

b. *Functions.*—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Licenses and Inspections, on the following:

1. Any matter related to the enforcement of the Charitable Solicitation Act.

2. Regulations promulgated under authority of Section 11 of said Act and amendment thereto.

c. Composition and membership:

1. The Charitable Solicitation Advisory Council shall consist of a Chairman and eight members. Members shall be chosen on the basis of their experience, reputation and demonstrated interest in the field of charity.

2. Members shall be appointed by the Board of Commissioners after consideration of nominations from such sources as they may consider appropriate. Each member shall serve until his successor has been duly appointed. Each member shall be subject to removal at the discretion of the Board of Commissioners. All appointments will be for three-year terms of office with the following exceptions.

(a) Initially the Board of Commissioners will appoint three members to terms expiring December 31, 1958; three members to terms expiring December 31, 1959; and three members to terms expiring December 31, 1960.

(b) If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

(c) Members appointed to unexpired terms shall serve only the unexpired portions of such terms.

d. Compensation.—Members shall serve without compensation.

e. Organization.—The Commissioners shall appoint the Chairman. All meetings of the Council shall be on call of the Chairman. The Director, Department of Licenses and Inspections, shall designate an employee of that Department to serve as Secretary for the Committee.

PART II

Effective date.—This order shall be effective on and after November 14, 1957.

ORGANIZATION ORDER NO. 121.—DEPARTMENT OF GENERAL ADMINISTRATION, FINANCE OFFICE

DECEMBER 12, 1957.

Order No. 57-3276.

Ordered: That Reorganization Order No. 20, dated November 10, 1952, as amended, relative to the establishment of the Finance Office, is hereby superseded in its entirety and replaced as follows:

PART I

Finance office.—a. The Finance Office, headed by a Finance Officer, established in Reorganization Order No. 20, dated November 10, 1952, as amended, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto (with the additions and deletions provided herein), shall continue under the direction and control of the Director of General Administration.

b. The Finance Office shall be headed by a Finance Officer who shall be responsible for the proper exercise of all functions and responsibilities assigned to the Finance Office. Except as otherwise specifically provided herein, all functions previously vested by statute in the Officers and Boards established under Reorganization Order No. 20, as amended, including the power to summon the attendance of any person to be examined under oath and the power to administer such oaths, are hereby transferred to the Finance Officer. He shall have full authority over the Finance Office and all personnel assigned thereto, including authority to reassign functions and personnel and to redelegate to other officials of the Finance Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Finance Office is established for the purpose of: administering the laws and regulations relating to taxes, fees, and assessments; collecting and depositing all revenues of the District of Columbia in appropriate

depositories and maintaining appropriate accounts relating thereto; establishing accounting standards for the District Government, developing an overall system of accounting and assisting departments in developing and installing internal accounting systems, including systems for the measurement of costs; maintaining centralized general ledger and appropriation accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and allotment accounts for control of funds available for expenditure, and preparing necessary accounting reports and financial statements thereon; and preauditing, certifying and properly disbursing District of Columbia funds.

PART III

Organization.—a. There are hereby established in the Finance Office, under the supervision and direction of the Finance Officer, the following organizational components: Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Enforcement Division, Accounting Division, and Processing Division.

b. There shall be established in the Finance Office such other organizational components subordinate to those established in this Order and such positions, with such duties and titles as the Finance Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Finance Office include but are not limited to the following:

a. Office of the Finance Officer:

1. Develops and proposes to the Director of General Administration and the Board of Commissioners major programs, policies and procedures on all taxation and fiscal matters within the purview of the Finance Office's functions.

2. Is responsible for overall administration, execution and interpretation of the applicable laws and regulations relating to taxation and finance within the purview of the Finance Office's functional responsibility and scope of operations.

3. Plans the programs and prescribes the policies of the Finance Office and plans, directs, coordinates and supervises its activities in accordance with the overall policies of the Department of General Administration.

4. Reviews proposed plans and legislation relating to finance and revenue matters originating within the Finance Office or with the departments or agencies of the District of Columbia Government, and consults with and advises the Director of General Administration and the Board of Commissioners in fiscal and revenue matters.

5. Studies the fiscal system for the purpose of determining the economic consequences of the existing structure or alternate structures and develops overall fiscal research program including estimating tax revenue; prepares monthly, annual and special reports.

6. Reviews and approves or modifies assessments of real property prior to action by the Board of Equalization and Review; reviews personal property assessments and administrative determinations of tax liability for all other taxes and takes appropriate action.

7. When such action is warranted, waives interest or penalties, or both, on all taxes administered by the Finance Office other than special assessments. For those amounts in excess of the tolerance established by the Finance Officer, with the approval of the Director of General Administration, for routine processing, billing and collecting of penalty and interest, maintains appropriate records showing actions taken and reasons therefor.

8. For those taxes other than real estate taxes administered by the Finance Office, makes final determinations on all requests for tax exemption in accordance with applicable laws, regulations, and Corporation Counsel opinions; and maintains appropriate records showing actions taken and reasons therefor.

9. For those taxes administered by the Finance Office, makes final determinations on all offers in compromise for settling tax liability; and maintains appropriate records showing actions taken and reasons therefor. In those

cases where litigation is pending or where no legal precedent has previously been established but legal advice is necessary or desirable, consults with the Corporation Counsel.

10. Plans and administers, for the Finance Office, centralized budget, accounting, procurement, administrative services, personnel and management improvement activities; and coordinates these activities, including the development and justification of Finance Office budget estimates, with the overall program of the Department of General Administration.

11. Administers, as agent of the Commissioners of the District of Columbia, the provisions of Pub. L. 85-558, 85th Congress, 2d Session, approved July 25, 1958.

12. Certifies to the Secretary of the Treasury amounts requested to be restored from lapsed appropriations as being necessary for the payment of audited claims under such appropriations and, provided, the D.C. Budget Office shall be informed of all such amounts certified, pursuant to the provisions of Section 14, District of Columbia Appropriation Act 1959, approved August 6, 1958.

(Subpars. 11 and 12 added by order No. 58-1895, Nov. 13, 1958.)

b. Property Tax Division:

1. Values all real estate, taxable and exempt, and all taxable tangible personal property for assessment purposes.

2. Makes studies of property values and develops appraisal standards and techniques.

3. Conducts sales ratio studies and determines depreciation and obsolescence factors.

4. Prepares and maintains tax maps and other necessary records.

5. Approves the levying of all special assessments against real estate as provided by law and regulations; assesses rents for vault space upon information furnished by the Director of Highways; and, upon written notification from the Director of Licenses and Inspections, the Director of Public Health, or the Board for the Condemnation of Insanitary Buildings, that a nuisance has been abated or an illegal or insanitary condition has been corrected, as the case may be, including a statement of the exact cost of such abatement or correction, is authorized to record proper assessment and render bills thereon as provided by law.

6. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

c. Revenue Division:

1. Develops and conducts audit programs and determines extent of tax liability in connection with the administration of income and franchise, sales, use and excise, inheritance and estate and other related taxes.

2. Develops and conducts investigation and compliance programs and determines extent of tax liability in connection with the aforesaid taxes.

3. Confers with taxpayers with respect to protests of proposed assessments.

4. Administers and executes the licensing requirements of the tax laws and regulations administered by the Finance Office.

5. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

d. Treasury Division:

1. Collects revenues of the District of Columbia, accounts for and distributes all collections into appropriate revenue accounts, and deposits with the Treasurer of the United States all funds so received.

2. Makes disbursements in accordance with law and regulation, in cash or by checks drawn on the Treasurer of the United States, based on vouchers and payrolls duly certified by a designated certifying officer, and is accountable therefor.

3. Is responsible for all balances with the United States Treasury.

4. Dispenses and accounts for tax stamps.

5. Administers real estate tax sales.

6. Is responsible for the custody of trust fund securities.

e. Enforcement Division:

1. Conducts programs relating to the enforcement of collections of delinquent taxes, and delinquent St. Eliza-

beths Hospital and D. C. institutional and contract hospital accounts, referring to the Corporation Counsel those accounts requiring court action.

2. Conducts investigations and takes such action as is provided by law to enforce collection of delinquent and unpaid accounts, including the filing of liens and the seizure of goods and chattels and the public or private sale of same.

3. Is responsible for billing and maintaining accounts receivable records of current and delinquent St. Elizabeths Hospital accounts and maintaining accounts receivable records of unpaid and delinquent D. C. institutional and contract hospital accounts.

4. Confers with other jurisdictions with respect to reciprocal agreements on tax matters, and makes appropriate recommendations to higher authority.

5. Sells at private sale all goods and chattels seized for non-payment of District taxes when the highest bid offered therefor at public auction is not sufficient to meet the amount of taxes, penalties and costs due thereon; and defrays the cost of advertising, handling, auctioneer's fee and other expenses incidental to the holding of such sale, from the proceeds therefrom.

6. Applies for administration and acts as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at \$500 or less and in which the District of Columbia is the principal creditor of said estate. Deposits all funds so collected into the Miscellaneous Trust Fund Account in the Accounting Division, Finance Office, to be thereafter disbursed by the Disbursing Officer upon direction of the administrator and certification by the Chief of the Accounting Division that the disbursements are in accordance with the final order of the U. S. District Court for the District of Columbia, Holding a Probate Court.

It is further ordered that Commissioners' Order No. 55-2455, dated December 29, 1955, is hereby rescinded. (Subsection e.6, added by order dated Apr. 24, 1958, No. 58-643.)

f. Accounting Division:

1. Establishes accounting standards for the District Government and develops an overall system of accounting to reflect the assets and liabilities and financial operations of the District of Columbia; advises and assists departments and agencies in developing and installing internal accounting systems, including systems for the measurement of costs, in conformance with and auxiliary to the overall system of accounting.

2. Maintains centralized general ledger accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and establishes and maintains allotment accounts for control of funds available for expenditure.

3. Maintains accounting records for, prepares, and certifies payrolls.

4. Preaudits and certifies the correctness and propriety of obligations and expenditures.

5. Maintains records and reports and performs duties pertinent to retirement administration and accounting, the Federal Employees Life Insurance program, and United States savings bond accounting.

6. Compiles and prepares accounting information and reports for the purpose of reflecting the financial status and condition of the District Government or any of its parts.

g. Processing Division:

1. Receives and performs initial processing of tax returns and establishes and maintains accounting records thereon.

2. Performs centralized machine tabulating accounting services for the Finance Office, including but not limited to income and franchise, sales and use and real property tax accounting and billing, and general ledger, allotment ledger and payroll accounting.

3. Maintains subsidiary and detail general ledger, allotment ledger, and revenue accounts on punch cards.

4. Prepares mechanically various statistical and financial reports and performs other related services for the Finance Office.

5. Preaudits tax returns and prepares notices of tax determination and/or authorizations for refunds in accordance with procedures coordinated with the appropriate divisions; refers to the respective tax units those returns requiring further audit and investigation.

6. Maintains and services centralized accounts receivable records and controls for taxes.

7. Performs mechanical tabulating services, from time to time, for other agencies of the Department of General Administration and the District of Columbia, based on the needs and requirements of said agencies and the Division's schedule of operations.

8. In collaboration with the Management Office, furnishes technical advice and assistance to departments and agencies of the District of Columbia Government with respect to the advisability and feasibility of mechanizing operations or procedures, and assists in overall plans and studies of District-wide data processing programs which may be undertaken.

PART V

Board of Equalization and Review.—a. There is established in the Finance Office, a Board of Equalization and Review composed of the Finance Officer as Chairman, and two or more qualified officials of the Finance Office to be designated by the Finance Officer. The Chairman may designate an alternate Chairman to serve in his stead.

b. The Board shall formulate rules of procedure for the conduct of its affairs. Any three members of said Board meeting at the call of the Chairman shall constitute a quorum.

c. The functions to be performed by the Board of Equalization and Review shall include but not be limited to the following:

1. Reviews and equalizes real estate assessments in the manner prescribed by law.

2. Hears complaints against real estate assessments and takes appropriate action in the manner prescribed by law.

3. Transmits equalized assessments to the Board of Commissioners for approval as prescribed by law.

PART VI

Committee on Special Assessment Appeals.—There is hereby established a Committee on Special Assessment Appeals, such Committee to comprise an Assistant Corporation Counsel designated by the Corporation Counsel, the Finance Officer, and the Head of the Property Tax Division of the Finance Office. The Assistant Corporation Counsel shall be Chairman of this Committee.

The Committee is hereby delegated the following authorities and its decisions thereon shall be final: (1) to abate, reduce, or adjust special assessments due the District of Columbia in accordance with its findings; and (2) to waive, in whole or in part, interest or penalties, or both, on special assessments due the District of Columbia.

PART VII

Abolition of Boards and Offices.—The existing Board of Assistant Assessors (real estate), the existing Board of Personal Tax Appraisers, the existing Board of Equalization and Review, the existing Committee on Special Assessment Appeals, and the existing Offices established in Reorganization Plan No. 20, as amended, are abolished.

PART VIII

Repeal of previous orders.—Reorganization Order No. 20, as amended, and all Commissioners' Orders, or parts of Commissioners' Orders, in conflict with the provisions of this order are, to the extent of such conflict, hereby repealed.

PART IX

Effective date.—This order shall become effective on and after December 12, 1957.

ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

JANUARY 8, 1959

Order No. 59-33.

Ordered: That Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

PART I

Department of Highways and Traffic.—There is established, under the direction and control of the Engineer Commissioner, a Department of Highways and Traffic, headed by a Director.

PART II

Purpose.—The Department of Highways and Traffic is established for the purpose of planning, designing, constructing, operating, maintaining and repairing the highway, bridge and traffic control facilities, and the electrical apparatus, equipment and communications systems for the District of Columbia.

PART III

a. *Director, Department of Highways and Traffic.*—The Director, Department of Highways and Traffic, as head of the Department, and as agent of the Commissioners of the District of Columbia where so designated in municipal regulations, shall be responsible for developing, proposing and implementing highway and traffic programs and policies; for the type, design, location, construction, operation and maintenance of a highway system; and for the planning and operation of a traffic system. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the economics, costs, esthetics and effect on physical environment. Except as hereinafter otherwise provided, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to delegate authority and assign responsibility to officials and personnel of the Department in such degree as, in his judgment, is necessary to establish and maintain efficiency and good administration. All authority vested in the Director, including all authority redelegated by the Director pursuant to authorities specified herein, shall be exercised in accordance with applicable laws, rules, regulations, and applicable Commissioners' Orders or directives issued pursuant to Commissioners' Orders.

b. The Director shall establish, within the Offices and Bureaus hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components; provided, that all actions establishing, altering, changing or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration for appropriate action pursuant to applicable Commissioners' Orders.

PART IV

Organization and functions.—The Department of Highways and Traffic shall be comprised of the following major organizational components in which responsible officials and personnel assigned thereto shall perform the functions described herein:

a. *Office of Business Administration.*—Plans, directs and coordinates a comprehensive program of business administration activities necessary to meet the objectives and program requirements of the Department, including but not limited to estimates of Highway Fund revenues, budgetary matters, files, and records, accounting systems and procedures, procurement, position classification, personnel, management improvement, organizational planning and similar administrative services.

b. *Office of Planning and Programming.*—Plans an integrated system of highways for the District of Columbia including performance of necessary research and formulation of master plans; recommends programs designed to effectively implement such plans; initiates basic geometric features of highway projects and guides and controls the interpretation and application of such features; coordinates plans and programs with Federal, State and District agencies; performs public relations activities

c. *Bureau of Design, Engineering and Research.*—Develops or obtains from consultants, all engineering and design data and other information, and plans, designs and specifications, for the construction of highway projects in accordance with the plans and programs of

the Office of Planning and Programming; prepares consultant agreements, construction contracts, and cost estimates; recommends awards of contracts; implements Federal Aid Projects; determines necessity for, and schedules, the acquisition by the Department of General Administration of property for highways and performs other services in connection therewith; coordinates construction and controls the allocation of highway space for construction and repair of underground utility facilities and maintains maps and other records of all surface and underground facilities; approves or disapproves issuance of permits for the use of public space and performs related inspections; performs testing and research services relating to materials; evaluates the quality of construction and other materials; develops standard material specifications; furnishes advice on technical matters; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies.

d. *Bureau of Construction and Maintenance.*—Directs the construction, maintenance, repair, and inspection program for highway projects and municipal wharves; performs field survey work on highway projects; procures, maintains, repairs and houses departmental vehicles and equipment and such non-departmental vehicles and equipment as the Commissioners order from time to time; performs landscaping in street right-of-way and activities related to the maintenance and beautification of such streets; operates draw spans; controls the transporting of over or undersize loads through the District; participates and furnishes equipment during emergency snow removal; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies.

e. *Bureau of Traffic Engineering and Operations.*—Develops, engineering and design data and other information, programs, plans, designs and specifications for the construction, maintenance, and repair of traffic control facilities, channelization, traffic signals, signs, markings, parking meters, and street lighting; performs related inspection, develops, engineering and design data and other information, plans, designs, and specifications for the installation, maintenance, and repair of radio, electronic and communication systems (excluding radio and communication systems of the Police and Fire Department); prepares traffic regulations; develops and executes provisions of the Emergency Snow Plans. Furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District, or private agencies.

PART V

Repeal of previous orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in any way alter, amend or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VI

Effective date.—This Order shall become effective on and after January 8, 1959.

ORGANIZATION ORDER NO. 123.—HOSPITAL ADVISORY COUNCIL

AUGUST 4, 1959.

Order No. 59-1361.

Ordered: There is hereby created in the District of Columbia a permanent committee of citizens representing the community at large to be known as the Hospital Advisory Council established pursuant to the authority vested in the Commissioners by Reorganization Plan No 5 of 1952, and pursuant to the requirements of the Hospital Survey and Construction Act (Pub. L. 725, 79th Cong.) as amended.

PART I

Purpose.—To provide for advisory participation by citizens, lay and professional, in the program of the Municipal Government for the construction and regulation of hospitals and medical facilities and related facilities, and to

act in an advisory capacity to the Director of Public Health on such matters affecting the general public.

PART II

Functions.—It is the intent of the Board of Commissioners that the Hospital Advisory Council shall, in general, study and make appropriate recommendations to the Director of Public Health in the following respects:

a. *Need for hospital services and related facilities:*

1. Study the need for hospital services, beds and facilities and make recommendations with respect thereto based upon a continuing evaluation of such services, beds, and facilities.

2. Evaluate proposals for construction of hospitals and related facilities, public or private, within the District of Columbia (except Federal hospitals) financed in whole or in part through reimbursement or other processes from public funds, such recommendations to include but not be limited to location of such hospitals and type and number of beds.

b. *Hospital regulations:*

1. Consult with and advise the Director of Public Health on matters concerning the development, establishment, promulgation, and/or subsequent amendment or modification of the Hospital Regulations, established under the authority of D.C. Code, Section 32-304, approved April 20, 1908.

2. Consult with and advise the Director on matters concerning the issuance, denial, suspension, or revocation of licenses for hospitals, considering in connection therewith evidence adduced at any hearing which may be held with respect to the possible denial, suspension or revocation of the license of a hospital.

c. *General:*

1. Study proposals for new policies and statutes, or changes in existing policies or statutes affecting the hospital and medical facilities program as hereinbefore expressed.

2. Aid in stimulating public interest, understanding and participation of the community in solving hospital problems.

3. Study and evaluate any other matters pertaining to hospitals which may be referred to the Counsel by the Commissioners or the Director of Public Health.

PART III

Composition and membership.—The Council shall consist of nine members (residents of the District of Columbia for a period of at least three years immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the hospital needs and desires of the community. The Commissioners may invite nominations from medical, nursing, hospital, and civic organizations of the community or the public at large, including the Council itself.

The Council shall consist of the representatives described in the two groups as follows:

a. *Hill-Burton requirements:*

1. Representatives of non-governmental organizations or groups.

2. District Government agencies concerned with the operation, construction, or utilization of hospitals.

3. Representatives of the consumers of hospital services selected from among persons familiar with the need for such services (Sec. 623(a)(3)).

4. Representatives of non-government organizations or groups or government agencies concerned with rehabilitation. (Sec. 647(2) Part F) of Public Law 482, 83d Congress, amending the Hill-Burton Act.

b. *General:*

1. One or more individuals of outstanding ability, representative of the medical profession.

2. One or more individuals of outstanding ability, in the field of hospital construction and hospital administration.

3. One or more individuals of outstanding ability, representative of other groups directly concerned with

the quality of hospital care, such as members of the dental, nursing, welfare, public health, or other allied professions in the field of health.

PART IV

Term of office. To be fixed at three years except for initial appointments, as follows: of the nine persons first appointed as members of said Council, three shall be appointed for one year, three for two years, and three for three years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. Members shall be eligible for reappointment.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Hospital Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties, so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Hospital Advisory Council shall determine its own organization and perfect its own rules of procedure. The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled

meetings. It shall hold additional meetings at the call of the Director of Public Health, the presiding officer of the Council, or a majority of the Council membership. All meetings shall be attended by the Director of Public Health and/or his designated representative.

PART VIII

Administration.—The Director of Public Health shall assist the Council in matters of administration of the Council and shall provide it with necessary staff services as needed.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners through the Director of Public Health and may be released at such time and under such circumstances as the Board of Commissioners or the Director of Public Health may determine.

PART X

Repeal of previous orders.—Commissioners' Order No. 302,311 dated April 8, 1947, as amended, establishing the Hill-Burton Advisory Council, is hereby repealed.

PART XI

The provision of this Order shall become effective on and after August 4, 1959.

ORGANIZATION ORDER NO. 124—PUBLIC INFORMATION UNIT

OCTOBER 22, 1959.

Order No. 59-1911.

Ordered: There is hereby established in the Executive Office, under the Board of Commissioners, a Public Information Unit, headed by a Public Information Officer, who shall be responsible for supplementing the existing procedures for the preparation and dissemination, chiefly through the media of radio and television, of information to the public concerning the Government of the District of Columbia.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap.	Sec.
19. Council on Law Enforcement.....	2-1901
20. Pawnbrokers	2-2001
21. Charitable Solicitations.....	2-2101

Chapter 1.—HEALING ARTS PRACTICE ACT

§ 2-101 [20: 121]. The healing art—Definitions—Exclusions.

NOTES TO DECISIONS

BURDEN OF PROOF

Statutes prohibiting practicing healing art without license but exempting certain practices under direction of person licensed to practice healing art, and providing that burden of proof of exemption shall be on defendant, gives defendant affirmative defense and requires no more than that defendant's evidence, with or without other evidence be sufficient to create reasonable doubt as to guilt and does not require defendant to prove defense beyond reasonable doubt. *Dowell v. United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

EVIDENCE, SUFFICIENCY

In prosecution for practicing healing art without license, evidence was sufficient to take case to jury. *Dowell v. United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

§ 2-102 [20: 122]. License required—Terms of license to be observed.

NOTES TO DECISIONS

INFORMATION

Record failed to show that trial court had erroneously permitted informations charging violation of Healing Arts Practice Act in administering treatment without being licensed to do so to be amended after jury had been sworn. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

§ 2-104 [20: 124]. Commission on licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fee specified in this section.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-119 [20: 139]. Applications for licenses to be filed with Commission—Contents of applications—Fees—Refunds.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-121 [20: 141]. Reciprocity with other States and foreign countries—Exception—Proof required.

NOTES TO DECISIONS

EVIDENCE

In prosecution for administering medical treatment in District of Columbia without being licensed to do

so, in view of fact that naturopathic association had no authority to authorize practice of any type of medicine in state adjacent to District of Columbia, exclusion of certificate of incorporation of such association and certificate issued by another association certifying to defendant's qualification as a naturopathic physician, which also had no such authority, was proper. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

RECIPROCITY

Maryland license to practice healing would not authorize licensee to come into District of Columbia and practice healing art. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

§ 2-122a. Certificate or diploma from national examining board—Proof required.

NOTES TO DECISIONS

AUTHORITY OF COMMISSION

Under statute authorizing the Commission on Licensure to Practice the Healing Art to issue license, without examination, to anyone holding diploma from a national examining board in certain circumstances, the Commission was not deprived of such power by allegation that there were two such national boards, and the Commission was authorized to determine whether signatory upon certificate presented by applicant was a national examining board. *Wendel v. Spencer et al.* (1954, 95 U. S. App. D.C. 25, 217 F. 2d 858).

§ 2-123 [20: 143]. Suspension and revocation of license—Procedure.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

NOTES TO DECISIONS

ADDITIONAL REMEDY

District of Columbia Code provision authorizing revocation of license of person convicted in United States District Court for the District of Columbia of any felony, without further hearing or procedure, provides an additional remedy for revocation of license and did not preclude resort to action in equity by Commission on Licensure to Practice the Healing Art for revocation of license under statute authorizing same in case of misconduct. *Dr. H. M. Ladrey v. Commission On Licensure etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

DUE PROCESS

Under District of Columbia Code permitting revocation of license because of misconduct after institution of action in United States District Court for the District of Columbia sitting as a court of equity, where complaint charged in words of criminal statute that physician had performed an abortion physician could not contend that the word "misconduct" was too vague and indefinite to meet requirements of due process. *Dr. H. M. Ladrey v. Commission On Licensure etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

EVIDENCE

In equity action by Commission on Licensure to Practice the Healing Art seeking revocation of physician's license to practice medicine and surgery in District of Columbia, evidence sustained finding that physician committed an abortion on patient who died as a result thereof. *Dr. H. M. Ladrey v. Commission On Licensure etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

RULES OF INTERPRETATION

Under statute authorizing District Court of the United States for the District of Columbia sitting as a court of equity to suspend license upon evidence showing that licentiate has been guilty of misconduct, licentiate has available to him full protection of rules and "misconduct" as a ground for suspension or revocation is not left as a matter of opinion but is susceptible to complete exposition under rules and requires proof as a matter of fact accordingly. *Dr. H. M. Ladrey v. Commission On Licensure etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

WIRE TAPPING

Fact that witness in equitable action for revocation of physician's license made phone call to physician and allowed police officer to listen to conversation on extension line, did not constitute wire tapping or violate statute prohibiting the interception and divulging of intercepted communications. *Dr. H. M. Ladrey v. Commission On Licensure etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

§ 2-129 [20:149]. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

COMPILER'S NOTE

The provisions in section 2-129 relating to review of decisions in the District Court of the District of Columbia have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

§ 2-130 [20:150]. Penalties.

(a) Any person violating the provisions of this chapter, except section 2-102, shall be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

(b) Any person violating the provisions of section 2-102 shall be punished, for the first offense, by a fine of not more than \$500 or by imprisonment for not more than six months, or by both such fine and imprisonment; for the second offense, by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment; and for the third and subsequent offenses, by a fine of not more than \$5,000 or imprisonment for not more than five years, or by both such fine and imprisonment.

(c) For the purposes of subsection (b) of this section, an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of the offense of practicing medicine or the healing art without a license, either in the District of Columbia or in any of the States or Territories of the United States. After an offender has been convicted of the violation of the provisions of section 2-102, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth the prior conviction or convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on

the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in subsection (b) of this section. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 39; June 22, 1954, 68 Stat. 269, ch. 338, § 1.)

AMENDMENTS

1954—The act of June 22, 1954, amended the section to make the exception as to violations of section 2-102 in subsection (a) and by adding the provisions in subsections (b) and (c).

§ 2-132 [20:152]. Enjoining unlawful practice of healing art—Procedure.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2-133 [20:153]. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients.

NOTES TO DECISIONS

EMERGENCY

Treatment of lady suffering from advanced cancer several times a week for two months was not the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing emergency treatment by physicians not licensed within District of Columbia. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Where purported physician, who was not licensed within District of Columbia, in response to telephone call wherein patient complained that he had pains in his chest, called on patient, diagnosed his illness and gave him some pills, physician was not engaged in the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing unlicensed physicians to administer treatment in actual emergency. *Id.*

INSTRUCTIONS

In absence of request for instruction exonerating person accused of violating Healing Arts Practice Act if he had administered medical treatment in the District of Columbia only in emergency cases, error could not be predicated upon alleged refusal of court to so instruct. *Aitchison v. United States* (D.C. Mun. App. 1953, 98 A. 2d 791).

§ 2-134 [20:154]. Exemptions from operation of license laws—Emergency cases—Massage, dietetics, or hygienic measures, X-ray or laboratory technicians—Prayer or spiritual treatment—Sale of drugs.

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for practicing healing art without license, instruction that defendant had burden of proof of statutory exemption, and that burden of proof is such proof by competent evidence to find beyond reasonable doubt that every material fact of such proof is necessary to acquittal, was reversible error. *Dowell v. United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

EMERGENCY

Treatment of lady suffering from advanced cancer several times a week for two months was not the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing emergency treatment by physicians not licensed within District of Columbia. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Where purported physician, who was not licensed within District of Columbia, in response to telephone call

wherein patient complained that he had pains in his chest, called on patient, diagnosed his illness and gave him some pills, physician was not engaged in the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing unlicensed physicians to administer treatment in actual emergency. *Id.*

EVIDENCE

Statutes prohibiting practicing healing art without license but exempting certain practices under direction of person licensed to practice healing art, and providing that burden of proof of exemption shall be on defendant, gives defendant affirmative defense and requires no more than that defendant's evidence, with or without other evidence be sufficient to create reasonable doubt as to guilt and does not require defendant to prove defense beyond reasonable doubt. *Dowell v. United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

INSTRUCTIONS

In absence of request for instruction exonerating person accused of violating Healing Arts Practice Act if he had administered medical treatment in the District of Columbia only in emergency cases, error could not be predicated upon alleged refusal of court to so instruct. *Aitchison v. United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

§ 2-137 [20: 157]. Enforcement.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

NOTES TO DECISIONS

MANDAMUS

The District of Columbia Municipal Court had jurisdiction to direct that charge of practicing healing arts without license should be tried by jury, and an erroneous decision on the question would not constitute such unlawful exercise of authority as would entitle Government to writ of mandamus directing Municipal Court to expunge jury trial order from the record. *United States v. Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

TRIAL BY JURY

The District of Columbia Municipal Court acting on demand for jury trial in prosecution for practice of healing arts without license was performing a judicial function, and not a ministerial act which could be controlled by mandamus. *United States v. Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

Chapter 2.—ANATOMICAL BOARD

§ 2-201 [20: 381]. Anatomical Board of the District of Columbia—Creation, duties, and powers.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department is set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1.

Chapter 3.—DENTISTS

§ 2-301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-305. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board or its assistants.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2-308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories.

* * * * *

The Board of Dental Examiners may, in its discretion, waive the theoretical examination and issue a license to any applicant who holds a certificate from the National Board of Dental Examiners: *Provided*, That such applicant shall pass a practical examination given by the Board of Dental Examiners: *Provided further*, That in exercising its discretion to waive theoretical examinations the Board of Dental Examiners shall satisfy itself that the examination given by the National Board of Dental Examiners was as comprehensive as that required in the District of Columbia.

The provisions of the last sentence of the preceding paragraph shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this amendatory act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan. (As amended, July 17, 1959, 73 Stat. 222, Pub. L. 86-98, §§ 1, 2.)

AMENDMENT

1959—Section 1 of the act of July 17, 1959, amended the section by adding the sentence beginning with "The Board of Dental Examiners—" and ending with "District of Columbia".

The last paragraph of the section as above set out is the text of section 2 of the Act.

§ 2-313. Fees—Expenses of board—Compensation of Members.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-314. Annual registration of dentists—Fees—Penalty for failure to register—Reinstatement—Copy of register to each dentist.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease from time to time, the fees specified in this section.

§ 2-323. Dental hygienists—Eligibility and Qualifications—Application—Form and requirements—Photograph—Verification—Fees.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-326. Admission to practice on practical examination—Reciprocity with States or Territories—Fees.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 3-327. Duties and powers of board—Practice of dental hygiene declared to be subject to regulation and control as affecting public health and safety.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Chapter 4.—NURSES

§ 2-404 [20: 244]. Registration—Application—Requirements—Registration of training schools.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-406 [20: 247]. Annual registration—Nurses—Training schools—Cancellation by failure to reregister—Restoration.

COMPILER'S NOTE

The provisions relating to the review of decisions in the District Court for the District of Columbia have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-407 [20: 248]. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2-408 [20: 249]. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—

Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952 established in the Government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The order transferred to the Director all of the functions and positions of the Office of the Auditor. Reorganization Order No. 19 established in the Department of General Administration an Internal Audit Office headed by an Internal Audit Officer. The function of auditing the accounts of the Nurses Examining Board referred to in section 2-408 was transferred from the Auditor to the Internal Audit Officer. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 5.—OPTOMETRISTS

§ 2-501 [20: 261]. "Optometry" defined.

NOTES TO DECISIONS

ACTION FOR NEGLIGENCE

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *S. Evers v. H. A. Buxbaum etc.* (1958, 102 U. S. App. D. C. 334, 253 F. 2d 356).

§ 2-502 [20: 262]. Practice of optometry without license prohibited—Misrepresentation—False impersonation—Penalties.

NOTES TO DECISIONS

ACTION FOR NEGLIGENCE

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *S. Evers v. H. A. Buxbaum etc.* (1958, 102 U. S. App. D. C. 334, 253 F. 2d 356).

INDICTMENT AND INFORMATION

In prosecution for practicing optometry without a license, information, which followed statutory phraseology, was sufficient. *Herman August Blohm v. District of Columbia* (D. C. Mun. App. 1955, 113 A. 2d 111).

Evidence sustained conviction for practicing optometry without a license. *Id.*

§ 2-503. Board of Optometry—Qualifications—Tenure—Oath—Removal.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-511 [20: 271]. Standard examination—Qualifications of applicants.

Any person over the age of twenty-one years, of good moral character, who has had a preliminary

education equivalent to a two years' course in a first-grade high-school (which shall be determined either by examination or by certificate acceptable to the Board as to work done in such approved institution), and who is a graduate of a school of optometry in good standing (as determined by the Board and which maintains a course in optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in—

- (a) Practical optics.
- (b) Theoretic optometry.
- (c) Anatomy and physiology and such pathology as may be applied to optometry.
- (d) Practical optometry.
- (e) Theoretic and physiologic optics. (May 28, 1924, 43 Stat. 180, ch. 202, § 11.)

ADDITIONAL REQUISITES

The order of the Board of Commissioners dated September 26, 1930, No. 317712, provided as follows:

Under the provisions of Section 12 (§ 2-512) of the act of Congress approved May 28, 1924, entitled "An Act to regulate the practice of Optometry in the District of Columbia", the Commissioners approved the request of the Board of Optometry provided for in said act, that Section 11 (§ 2-511) of the act be amended so as to increase the educational qualifications of applicants for license by said Board, the new section 11 (§ 2-511) to read as follows:

"Section 11. That any person over the age of twenty-one years, of good moral character, who has had a preliminary education equivalent to a four years course in a first-grade high school (which shall be determined either by examination or by certificate acceptable to the board as to work done in such approved institution), and who has attended and graduated from a school or college of Optometry in good standing (as determined by the board and which maintains a course in Optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in (a) Practical optics, (b) Theoretic optometry, (c) Anatomy and physiology and such pathology as may be applied to optometry, (d) Practical optometry, (e) Theoretic and physiologic optics."

The order of the Board of Commissioners, dated August 20, 1951, further provided as follows:

Ordered: Whereas, the Board of Optometry of the District of Columbia has proposed that the educational standards prescribed by Section 11 (§ 2-511) of the Act entitled "An Act to regulate the practice of optometry in the District of Columbia," approved May 28, 1924 (43 Stat. 177, ch. 202; title 2, ch. 5, D. C. Code, 1940 edition) be further amended or changed by requiring of each applicant for a license to practice optometry compliance with the following additional prerequisites:

1. Graduation from a school of optometry which maintains a course in optometry of not less than five years; and
2. Examination in the subjects of the "theory and practice of orthoptics and visual training" and the "theory and practice of contact lens fitting", it is

Ordered: That, pursuant to the provisions of section 12 (§ 2-512) of such Act, the proposed amendments or changes aforesaid be and are hereby approved, effective on and after September 30, 1951.

§ 2-514 [20: 274]. Fees for examination, registration, and renewals—Revocation of license—Reinstatement—Effect of temporary retirement.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-518 [20: 278]. Reciprocity with other States.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-519 [20: 279]. Holder of license not entitled to use any title or degree by virtue of such license.

NOTES TO DECISIONS

ACTION FOR NEGLIGENCE

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *S. Evers v. H. A. Buxbaum etc.* (1958, 102 U. S. App. D. C. 334, 253 F. 2d 356).

§ 2-520 [20: 280]. Physicians, surgeons, persons, selling spectacles or eyeglasses not to be governed by this chapter.

NOTES TO DECISIONS

ACTION FOR NEGLIGENCE

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *S. Evers v. H. A. Buxbaum etc.* (1958, 102 U. S. App. D. C. 334, 253 F. 2d 356).

Chapter 6.—PHARMACY

§ 2-601 [20: 191]. Pharmacy regulations—Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.

NOTES TO DECISIONS

CHARACTER EVIDENCE IN DRUG PROSECUTION

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, question put to police officer on cross-examination by defense counsel as to whether defendant had a record for narcotics was not the proper way to elicit character evidence and should have been stricken as irrelevant but once admitted, the question placed defendant's character in issue, and answer to effect that defendant had no previous narcotics record tended to establish defendant's good character and prosecution had the right to rebut such testimony. *Adams v. District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645)

EVIDENCE

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, evidence was sufficient to establish continuous custody of the drugs up until the time of trial, even though inspector for Food and Drug Administration who received evidence in Washington and delivered it to Food and Drug Administration located in Baltimore did not testify. *Adams v. District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

INSTRUCTIONS TO JURY

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, where evidence was admitted that defendant had been previously convicted for unauthorized use of an automobile, carrying a deadly weapon, and robbery, trial court's failure in not immedi-

ately correcting mistaken testimony about robbery conviction to show that actual conviction was for assault was not prejudicial error in view of trial judge's corrective instruction to jury at close of prosecution's case. *Adams v. District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

PRACTICING PHARMACY WITHOUT A LICENSE

The Municipal Court for the District of Columbia has inherent power to entertain a motion to vacate a sentence partially or totally void even after expiration of the term at which it was entered. *Ingols v. District of Columbia* (D. C. Mun. App. 1954, 103 A. 2d 879).

PREJUDICIAL ERROR

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, defense counsel's eliciting of testimony on cross-examination that defendant had no record of narcotics violations placed defendant's character in issue only to extent of character trait involved and admission of prosecution's evidence that defendant had prior convictions unrelated to narcotics was error but such error was not prejudicial in view of defendant's prior intent to testify and his testimony where his record was admitted for purpose of affecting his credibility. *Adams v. District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

§ 2-604 [20: 195]. Registered pharmacists from other jurisdictions.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-605 [20: 196]. Revocation of license—Grounds—Procedure.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2-606 [20: 197]. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in Court of Appeals—Public display of license.

COMPILER'S NOTE

The provisions relating to review of decisions in the Court of Appeals for the District of Columbia have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

NOTES TO DECISIONS

ILLEGAL PRACTICE

District of Columbia Board of Pharmacy should not have permitted person, who had practiced pharmacy illegally for more than five years, to apply for renewal of his pharmacist's license which had, for such period, been void. *Hendelberg v. Goldstein et al.* (1954, 93 U. S. App. D. C. 395, 211 F. 2d 428).

RENEWAL

Failure of District of Columbia Board of Pharmacy to act on pharmacist's license renewal application in the November in which such license could be renewed does not deprive Board of authority later to grant a timely filed application, but, to preserve such authority, Board must record in such month of November reason for failing or refusing to act in such month. *Hendelberg v. Goldstein et al.* (1954, 93 U. S. App. D. C. 395, 211 F. 2d 428).

Under District of Columbia law, if District Board of Pharmacy refuses to grant, during month following expiration of pharmacist's license, application for renewal filed in such month, Board must record reason for such failure or refusal and may thereafter grant renewal upon such application. *Id.*

§ 2-607. Board of pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal—Bond of treasurer—Duty to examine applicants.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-609 [20: 200]. Fees—Expenses—Compensation of Board.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-617 [20: 208]. Penalties—Enforcement.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

NOTES TO DECISIONS

INFORMATION

Informations charging defendant with sales, on two consecutive days, of certain drugs which could not legally be sold except by a licensed pharmacist, did not charge defendant with practicing pharmacy without a license, and therefore the sales could be considered separate offenses rather than part of a single continuing offense. *Ingols v. District of Columbia* (D. C. Mun. App. 1954, 103 A. 2d 879).

Chapter 7.—PODIATRY

§ 2-704. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, Board or its assistants.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2-709. Fees—Expenses of Board—Compensation of members.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-710. Annual registration of podiatrist—Fees—Penalty for failure to register—Reinstatement—Copy of register to each podiatrist.

During the month of December of each year, every licensed podiatrist shall register with the secretary-treasurer of the Board his name and office address and such other information as the Board may deem necessary upon blanks obtainable from said secretary-treasurer, and thereupon pay a registration fee of \$5. On or before the 1st day of November of each year it shall be the duty of the secretary-treasurer of the Board to mail to each podiatrist licensed in the District of Columbia, at

his last-known address, a blank form for registration. In the event of failure to register on or before the 31st day of December a fine of \$5 and the registration fee of \$5 shall be imposed, and should the practitioner fail to register and pay the fine imposed and continues to practice his profession in the District of Columbia he shall at the end of ten days from said date be considered as practicing illegally and penalized as otherwise provided for in this chapter. If he suspends his practice he may, in the discretion of the board, upon furnishing satisfactory evidence as to his moral character and professional standing, be reinstated at any time upon registering and paying a prescribed fee of \$25. On or before the 1st day of February, annually, said Board shall issue a printed register of the names and addresses so received, together with other information deemed interesting to the profession, a copy of which shall be mailed or otherwise sent to each registrant thereon. (As amended July 30, 1951, 65 Stat. 127, ch. 249, § 1.)

AMENDMENTS

The act of July 30, 1951, amended the section by substituting "\$5" for "\$2" wherever it appeared.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Chapter 8.—VETERINARIANS

§ 2-801 [20:171]. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.

There is hereby created a Board of Examiners in Veterinary Medicine, to be appointed by the Commissioners of the District of Columbia, which shall consist of five reputable practitioners of veterinary medicine, who shall have graduated from some college authorized by law to confer degrees, each of whom shall have been actively engaged in the practice of his profession in said District for a period of three years immediately prior to such appointment. The appointments first made shall be one for one year, one for two years, one for three years, one for four years, and one for five years, and thereafter appointments shall be for a period of five years, except such as are occasioned by death, resignation, or removal, in which cases the appointments shall be for the remainders of the unexpired terms: *Provided*, That the said Commissioners may, in their judgment, remove any member of said board for neglect of duty or other sufficient cause, after due notice and hearing. (Feb. 1, 1907, 34 Stat. 870, ch. 442, § 1; July 25, 1956, 70 Stat. 650, ch. 728, § 1.)

CROSS REFERENCES

Exemption from provisions of Alcoholic Beverage Control Act, § 25-109.

Persons exempted from the act, § 2-809.

AMENDMENTS

Section 1 of the act of July 25, 1956, cited to text, amended the section by striking from the first sentence the words "shall have been a bona fide resident of said District for three years last past before appointment, and each, during said period" and by inserting before the period at the end of the first sentence the words beginning with "for" and ending with "appointment."

COMPILER'S NOTE

Section 2 of the act of July 25, 1956, provides that where the office or agency referred to was abolished by Reorganization Plan No. 5, of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-803 [20:173]. Applications for license—Qualifications — Fees — Expenses — Examinations — Applications preserved.

From and after February 1, 1907, all persons desiring to practice veterinary medicine or any branch thereof in the District of Columbia, or who shall desire to hold themselves out to the public as practicing veterinary medicine or any branch thereof in the District of Columbia, shall make application to said Board of Examiners in Veterinary Medicine for a license so to do. Application for this purpose shall be upon a form furnished by said Board, and shall be accompanied by satisfactory evidence of good moral character, and by a diploma from a veterinary college having a curriculum equivalent to that required by the American Veterinary Medical Association Council on Education for approved schools and authorized by law to confer said diploma, which college shall require at least four sessions of study of veterinary medicine of not less than nine months each prior to the issue of such diploma, and by a fee of twenty-five dollars, except as herein otherwise directed, and from the fund thus created, the Board shall pay such necessary expenses as it may incur. Such expenses shall not exceed in any one fiscal year the amount of fees collected during that period, but if any balance remain after paying all such expenses the Commissioners of said District shall authorize the payment therefrom to the members of said Board for their services of such amounts as said Commissioners deem proper. Said Board shall, by means of examinations, ascertain the professional qualifications of all applicants for license to practice veterinary medicine in said District, and shall issue such licenses to all who are found by such examinations to be, in the judgment of said Board, competent to so practice; and no such license shall be issued to any person who has not demonstrated his competence, except as hereinafter otherwise provided. Such examinations shall be held at least once a year and shall include all such subjects as are ordinarily included in the curricula of veterinary colleges in good standing, but examinations may be held at such other times and include such other subjects as said Board shall authorize and direct. Said Board shall number consecutively all applications received, note upon each the disposition made of it, and preserve the same for reference, and shall number consecutively all licenses issued. (Feb. 1, 1907, 34 Stat. 871, ch. 442, § 3; July 25, 1956, 70 Stat. 650, ch. 728, § 3.)

AMENDMENTS

Section 3 of the act of July 25, 1956, amended the section generally.

COMPILER'S NOTE

Section 2 of the act of July 25, 1956, provides that where the office or agency referred to was abolished by Reorganization Plan No. 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished.

INCREASE OF FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Commissioner's Order No. 54-614 of March 16, 1954, fixed the examination fee at \$25. The examination was previously fixed at \$10.

§ 2-806 [20:176]. Appeal from Board—Board of review—Fees and compensation.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-810 [20:180]. Revocation of licenses—Causes—Procedure—Appeals—Costs.

COMPILER'S NOTE

The provisions relating to the review of decisions in the Court of Appeals for the District of Columbia have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

Chapter 9.—ACCOUNTANTS

§ 2-903. Board of Accountancy—Qualifications—Tenure—Removal.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-908 [20:298]. Examination fees—Compensation—Reports.

The Board of Accountancy shall charge for the examinations, together with certificates to successful applicants, provided for in this chapter, a fee of \$25. This fee shall be payable by the applicant at the time of making his or her initial application. Should the applicant fail to pass the required examination subsequent examinations will be given the same applicant for an additional fee to be fixed by the Board of Accountancy, not exceeding \$20 for each examination. From the fees collected under this chapter the Board shall pay all expenses incident to the examinations, the expenses of issuing certificates, and traveling expenses of the members of the Board while performing their duties under this chapter; and if any surplus remain on the 30th day of June of each year the members of the Board shall be paid therefrom such reasonable compensation for the actual time employed as the Commissioners of the District of Columbia may determine; and the remaining surplus, if any, shall be covered into the Treasury of the United States to the credit of the District of Columbia: *Provided*, That no expense incurred under this chapter shall be a charge against the funds of the United States nor the District of Columbia. The Board shall annually report the number of certificates issued and the receipts and expenses under this chapter during each fiscal year

to the Commissioners of the District of Columbia. (As amended June 16, 1952, 66 Stat. 137, ch. 438, § 1.)

AMENDMENTS

1952—The act of June 16, 1952, added the provision requiring the fee for subsequent examinations to be fixed by the Board of Accountancy with a \$20 limit. The prior provision called for a flat fee of \$10.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Chapter 10.—ARCHITECTS

§ 2-1001 [20:301]. Board of examiners—Creation.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

NOTES TO DECISIONS

PRACTICE OF ENGINEERING

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

PRIOR LAW

The Architect's Registration Act, prior to 1950 amendment, in no way restricted actual practice of architecture, but merely prohibited use of title of architect by one not licensed, and wrongful use of title of architect by one not so licensed did not invalidate his contract and did not deprive him of right to recover for services which were legally rendered under the contract. *Dunn v. Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

REGULATIONS MUST BE REASONABLE

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REPEAL BY IMPLICATION

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

§ 2-1014 [20:314]. Practice of architecture limited— Practice of architecture and architect defined.

NOTES TO DECISIONS

ARCHITECTURAL SERVICES

Where person, designated as architect and supervising engineer in construction contract, had drawn plans and prepared specifications prior to effective date of 1950 amendment to Architect's Registration Act, which amendment, as a regulatory measure, prohibited practice of architecture without certificate from Board of Examiners and Registrars of Architects, and building was under actual construction before such date, although not completed for some months thereafter, services rendered by such person after such date were not architectural services. *Dunn v. Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

CONSTRUCTION

Within Architect's Registration Act, subsequent to 1950 amendment, the practice of architecture is restricted to acts done in connection with design of any building or addition or structural alteration thereto, and does not extend to the actual construction or superintendence of construction of a building. *Dunn v. Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

The Architect's Registration Act, subsequent to 1950 amended is a regulatory act designed for public welfare, and one who engages in practice of architecture in violation of the act cannot recover for his services.

§ 2-1019 [20:319]. Registration without examination.

NOTES TO DECISIONS

FALSE STATEMENT IN APPLICATION

Renewal is largely a ministerial act and in no way establishes validity of original registration, and Board of Examiners and Registrars of Architects could not have refused to renew on sole ground that charges were pending against registrar or that it had received information adverse to him; and, therefore, Board could not be held to have waived its right to revoke by annually renewing registration. *Stone v. Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Three-year statute of limitations, if applicable to proceeding to revoke architect's certificate of registration as obtained through fraud or misrepresentation, would not begin to run until discovery of facts. *Id.*

FINDINGS OF BOARD

Board of Examiners and Registrars of Architects was not bound to accept registrant's testimony that he did not know his Maryland registration had been revoked when he gave negative response to question as to whether any of his registration certificates had ever been revoked; and, on record presented, Board could reasonably find that his response had been false. *Stone v. Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Even if Board of Examiners and Registrars of Architects would not have been authorized to refuse registration merely on basis of revocation in another jurisdiction, false answer to question seeking to elicit such information would be ground for revocation. *Id.*

§ 2-1023 [20:323]. Fees.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-1025. Certificate—Annual renewal.

NOTES TO DECISIONS

JUDGMENT

Where mathematical computation indicated that trial court erroneously allowed plaintiff to recover on two contracts, whereas recovery on one contract was barred by violation of architects' licensing statute, but evidence supported award in part, judgment would be affirmed on condition of remittitur. *Holiday Homes, Inc. v. William K. Briley* (D. C. Mun. App. 1956, 122 A. 2d 229).

Where architect's license was erroneously renewed in 1953, since fee forwarded was insufficient, and architect did not renew registration until October 1955, his rendition of designs while registration was lapsed was violative of statute, but such violation extended only to November, 1954 agreement under which he consented to use of existing plans, and agreed to design new house, and did not preclude recovery for separable agreement to render designs in plans for additional salary, under which he rendered designs after renewal of license. *Id.*

PRACTICE OF ARCHITECTURE

Discharge of general supervisory duties in construction business did not constitute practice of "architecture" within licensing statute.

The statute prohibiting practice of "architecture" without license does not preclude all supervision of performance of one having a knowledge of architecture, especially when supervision is primarily concerned with analyzing and correcting inefficiencies in a business apparently being operated at a loss. *Holiday Homes, Inc. v. William K. Briley* (D. C. Mun. App. 1956, 122 A. 2d 229).

VALIDITY OF ORIGINAL REGISTRATION

Renewal is largely a ministerial act and in no way establishes validity of original registration, and Board of Examiners and Registrars of Architects could not have refused to renew on sole ground that charges were pending against registrar or that it had received information adverse to him; and, therefore, Board could not be held to have waived its right to revoke by annually renewing registration. *Stone v. Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

§ 2-1026 [20:326]. Exemptions.

NOTES TO DECISIONS

PRACTICE OF ENGINEERING

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REGULATIONS MUST BE REASONABLE

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REPEAL BY IMPLICATION

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

§ 2-1027 [20:327]. Revocation of certificate—Notice—Causes.

NOTES TO DECISIONS

FINDINGS BY BOARD

Even though the sole conclusion of Board of Examiners and Registrars of Architects was that registrant violated District of Columbia statute permitting revocation of certificate of registration obtained through fraud or misrepresentation, the Board must also find from the evidence of record that the actual obtaining of the certificate was due to fraud or misrepresentation in order to revoke the certificate. *Stone v. Board of Examiners and Registrars of Architects etc.* (1957, 101 U. S. App. D. C. 348, 249 F.2d 104).

FRAUD OR MISREPRESENTATION

Even if Board of Examiners and Registrars of Architects would not have been authorized to refuse registration merely on basis of revocation in another jurisdiction, false answer to question seeking to elicit such information would be ground for revocation. *Stone v. Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Three-year statute of limitations, if applicable to proceeding to revoke architect's certificate of registration as obtained through fraud or misrepresentation, would not begin to run until discovery of facts. *Id.*

Chapter 11.—BARBERS

Sec.

2-1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine (New).

§ 2-1103. Board of Barber Examiners—Qualifications—Tenure—Removal Register—Power to make rules and regulations.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various Board members and commissioners—Deposit of fees collected in the Treasury—acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-1109 [20:447h]. Renewal of certificates.

Certificates issued by the Board shall be renewed annually upon application to the Board by the holder of the certificate. The Board shall renew or restore certificates which have expired upon application and payment of the required fee, accompanied by a health certificate annually, showing that applicant is free from contagious and infectious diseases. (June 7, 1938, 52 Stat. 622, ch. 322, § 9.)

§ 2-1110 [20:447i]. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

COMPILER'S NOTE

The provisions relating to the review of decisions in the District Court have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

§ 2-1111 [20:447j]. Fees—Refunds.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-1112 [20:447k]. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.

The Commissioners are authorized and directed to provide suitable quarters for the Board. The compensation of each member of the Board, other than the secretary-treasurer, shall be fixed by the

Commissioners at not to exceed \$20 for each day actually and necessarily spent in their duties as such members: *Provided*, That the total compensation payable to each such member shall not exceed \$600 per annum. The Commissioners are also authorized and directed to appoint such clerks, inspectors, and other personnel as they deem to be necessary to assist the Board in carrying out the provisions of this chapter: *Provided*, That such inspectors shall be qualified barbers, each of whom shall have been engaged in the practice of barbering in the District of Columbia for a period of five years immediately prior to their appointment and shall be appointed after a competitive examination held for said positions by the Board. Compensation of such clerks, inspectors, and other personnel, including the secretary-treasurer of the Board, shall be fixed by the Commissioners. Payments for expenses of the Board, including those authorized by this section, shall not exceed the amount received from the fees provided for in this chapter; and if at the close of any fiscal year there be any funds unexpended in excess of the sum of \$1,000 such excess shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided further*, That no expense incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia. (As amended July 30, 1951, 65 Stat. 128, ch. 251, § 1.)

AMENDMENTS

1951—The act of July 30, 1951, amended the section by raising the compensation from \$9 per day to not to exceed \$20 per day and added the provision that such compensation should not exceed \$600 per annum. The section previously provided for the appointment of one clerk and three inspectors only. The provision for appointment of "other personnel including the secretary-treasurer of the Board" was added by the Act of July 30, 1951. Other changes were made in phraseology.

EFFECTIVE DATE OF 1951 AMENDMENT

Sec. 4 of the act of July 30, 1951, provided: "This Act shall take effect on the first day of the second month following its enactment."

§ 2-1114 [20:447m]. Unlawful practice—Penalty.

* * * * *

(b) Any person violating any of the provisions of this chapter shall upon conviction be fined not more than \$200. (As amended July 30, 1951, 65 Stat. 128, ch. 251, § 2.)

AMENDMENTS

1951—Sec. 2 of the act of July 30, 1951, amended the section by substituting the words "not more than \$200" for the words "not less than \$25".

EFFECTIVE DATE OF AMENDMENT

See note under § 2-1112.

§ 2-1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.

The Commissioners of the District of Columbia are authorized by regulation to require the owner or the manager of every barber shop in the District of Columbia to post on a sign or signs the prices of services rendered to the public and they may specify in such regulations the sizes of the sign or signs, the lettering thereon, and the location thereof upon which prices are required to be posted. The Com-

missioners are further authorized to prescribe in such regulations that for each violation thereof there may be imposed a fine not exceeding \$200. (July 30, 1951, 65 Stat. 128, ch. 251, § 3.)

EFFECTIVE DATE

See note under § 2-1112.

Chapter 12.—BOXING COMMISSION

§ 2-1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-1213. Permit—Duration, revocation—Examination of accounts and records.

No person shall hold or conduct a boxing contest or training exhibition in connection therewith in the District of Columbia without a permit from the commission. The commission is authorized in its sole judgment and discretion to assign to licensed professional promoters dates on which boxing contests may be held, and no licensed professional promoter shall hold any boxing contest on any date unless specifically authorized so to do by the commission. When two or more promoters make application to hold separate boxing contests on an identical date not at the time of such application assigned to either or any of the promoters making such applications, the commission shall, at a meeting open to the public, make its determination as to whether either or any of such applications will be granted, and if so, which, and in connection with such determination shall take into consideration the public interest, local demand, and the relative ranking of the boxers engaging in the proposed contests. Each such permit shall be limited to a period of one day, except that in case of any interscholastic or intercollegiate meet a permit may be issued for the duration of such meet, and for training exhibitions in connection with boxing contests where an admission fee is charged or received, a permit may be issued for the duration of the training period. No permit as described in this section shall be issued to any person unless such person agrees to accord to the Commission the right to examine the books of accounts and other records of such person relating to the boxing contest or exhibition for which such permit is issued, and such permit shall so state on its face. A permit may be revoked at any time in the discretion of the Commission. (As amended July 5, 1952, 66 Stat. 392, ch. 577, § 1.)

AMENDMENTS

1952—The act of July 5, 1952, inserted the second and third sentences.

§ 2-1216. Fees for licenses and renewals and permits.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-1218. Advance notice to commission of contests—amount and payment of gate tax—Report to commission—Contents of admission tickets.

Every person holding or conducting any boxing contest for which an admission fee is charged or received, or for which revenue is received from the sale, lease, or other exploitation of radio, television, or motion-picture rights, or from other public presentations of such contest, or for which such fee is charged or received and such revenue is received, shall pay to the Commission a sum equal to the larger of the following: (a) An amount equal to 10 per centum of the gross receipts realized by such person as a result of holding or conducting such contest, including receipts derived from the sale of admissions to the contest, and receipts derived from the sale, leasing, or other exploitation of radio, television, or motion-picture rights and from other public presentation of such boxing contest, or (b) an amount equal to the total actual cost of compensation of personnel assigned by the Commission to supervise such contest: *Provided*, That no person holding or conducting any amateur boxing contest under the jurisdiction and with the sanction of the District of Columbia Association of the Amateur Athletic Union of the United States shall be required to pay to the Commission any such sum which includes receipts derived from the sale, lease, or other exploitation of radio, television, or motion-picture rights relating to any such amateur boxing contest. Payments of money required by this section shall be accompanied by reports in such form as shall be prescribed by the Commission. Each ticket of admission to any such boxing contest shall bear clearly upon the face thereof the purchase price of the said ticket. (As amended July 5, 1952, 66 Stat. 392, ch. 577, § 2.)

AMENDMENTS

1952—The act of July 5, 1952, amended the section generally, and added provisions concerning proceeds from radio, television or motion picture rights.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

§ 2-1219. Covering of receipts into trust fund—Payment of salaries and expenses from fund—Limitation—Disposition of excess moneys—Advances for expenses and compensation.

(a) All funds, whether in cash or other form derived from license fees, permit fees, taxes on gross receipts, penalties, and receipts of whatever nature collected or due under sections 2-1201 to 2-1208, remaining unexpended or unobligated on December 20, 1944, or provided for by this chapter, shall be paid to the Collector of Taxes of the District of Columbia and deposited into the Treasury of the United States to the credit of the account "Miscellaneous trust-fund deposits, District of Columbia Boxing Commission", and shall be disbursed in the same manner as other trust funds are disbursed by the District of Columbia. The said trust fund shall be available to pay compensation of members and employees of the Commission and reasonable and necessary expenses, including office supplies,

furniture and fixtures, postage, official badges, ring equipment, trophies, and actual and necessary traveling expenses of members of the Commission or employees thereof incurred in the performance of their official duties. The said fund shall not be available to pay compensation to members of the Commission unless the same is sufficient to pay the secretary and other employees of the Commission their accrued compensation. If, on the last day of any fiscal year—that is to say, June 30—after the payment, or provision made for payment, of all lawful obligations and of all then accrued compensation of members and employees of the Commission, the said trust fund shall exceed the sum of \$25,000, such excess shall be deposited to the credit of the District of Columbia as miscellaneous revenues. The disbursing officer of the District of Columbia is authorized to advance to the Commission, upon requisitions previously approved by the auditor of the District of Columbia, sums of money not to exceed \$500 at any one time, to be used for office and sundry expenses of the Commission and for payment of compensation of inspectors, referees, judges, timekeepers, and examining physicians.

(b) Notwithstanding the provisions of subsection (a) of this section, any interest-bearing bonds owned by the Boxing Commission of the District of Columbia prior to December 20, 1944, may be retained by the District of Columbia Boxing Commission, and the said Commission is authorized, when sufficient funds to defray its expenses are not otherwise available, to sell or redeem one or more of the said bonds, to reinvest the proceeds from any sale or redemption of the said bonds, and to use for the purpose of defraying the expenses of the said Commission the proceeds from the sale or redemption of the said bonds, together with the interest from the said bonds, any interest from any bonds or other securities in which such proceeds from such sale or redemption were reinvested, and the proceeds from the sale or redemption of any bonds or other securities purchased by the said Commission for reinvestment purposes, pursuant to the authority herein contained. (As amended July 5, 1952, 66 Stat. 393, ch. 577, § 3.)

AMENDMENTS

1952—The act of July 5, 1952, substituted "\$25,000" for "\$15,000" in subsection (a) and added subsection (b).

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952, established under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 20 established the Finance Office in the Department of General Administration. Included in the Finance Office were an Office of the Assessor, the Office of the Collector of Taxes, the Disbursing Office, and the Accounting Office headed by an Accounting Officer. The function of approving requisitions described in section 2-1219 was transferred from the Auditor of the District to the Accounting Officer by Order No. 20. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 2-1220. Quarterly audit of accounts.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952, established, under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of the quarterly audit of the accounts of the Boxing Commission was transferred from the Auditor of the District to the Internal Audit Officer. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 13.—COSMETOLOGISTS

§ 2-1301. Examination and licensing of those engaged in cosmetology—Definitions.

COMPILER'S NOTE

1955—The act of August 4, 1955, 69 Stat. 485, ch. 544, § 1, provides that the provisions of this chapter (13) and of section 47-2310, "shall not be applicable to activities conducted in connection with any bona fide regularly scheduled national annual convention of any national association of professional hairdressers or cosmetologists, from which the general public is excluded."

CROSS REFERENCE

Conventions of national associations of hairdressers or cosmetologists, exempted, § 47-2310a.

§ 2-1302. Board of Cosmetology—Qualifications—Tenure—Removal—Officers—Compensation, bond—Meetings—Quorum—Records.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-1319 [20: 445r]. Fees—Disposition of surplus.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Chapter 14.—PLUMBERS

§ 2-1401. Plumbing board—Appointment.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-1404 [20: 344]. Bond.

NOTES TO DECISIONS

ACTION ON BOND

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety

on indemnity bond which named only District of Columbia as obligee therein. *Bolten v. Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

§ 2-1405 [20: 345]. License—Renewal, fee, revocation.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

NOTES TO DECISIONS

ACTION ON BOND

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten v. Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

§ 2-1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

§ 2-1504 [20: 364]. License fee.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

Chapter 17.—ARMORY BOARD

DISTRICT OF COLUMBIA STADIUM

Sec.

- 2-1720. Purpose—Authorization of Armory Board to construct stadium—Plans.
- 2-1721. Acquisition of site by Secretary of the Interior—Construction, maintenance and operation by Board.
- 2-1722. Bonds—Issuance of by Board to pay cost of stadium—Registration of bonds—Redemption—Sale of bonds—Exemption of bonds from taxations.
- 2-1723. Authority of Board outlined.
- 2-1724. Deposit of receipts into operating fund—Use of fund—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be in sinking fund—Statement to be filed with Congress.
- 2-1725. Title to stadium to vest in United States—Date.
- 2-1726. Employment of personnel and fixing of compensation—Delegation of authority.
- 2-1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Commissioners may borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.
- 2-1728. Filing of annual reports with Congress.
- 2-1729. "Stadium" defined

§ 2-1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.

There is hereby created an Armory Board working capital fund in the amount of \$100,000, and there shall be deposited in the Treasury of the United States to the credit of the said Armory Board working capital fund all receipts derived from the exercise by the Armory Board of the powers granted by this chapter. Said Armory Board working capital fund, including all receipts credited thereto, shall be used as a permanent revolving fund for all expenses incurred by the Armory Board in the exercise of the powers granted by this chapter, including personal services. There shall also be transferred to said Armory Board working capital fund all revenues derived from rentals of the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, except revenues resulting from the operation of concessions, and the Secretary of the Treasury is authorized to transfer to the credit of the Armory Board working capital fund authorized by this chapter funds resulting from rental of the District of Columbia National Guard Armory received by him and held in escrow pending enactment of legislation. As soon as practicable after the close of each fiscal year, after provision has been made for payment of all lawful obligations then incurred, all sums in excess of \$100,000 in said Armory Board working capital fund shall be transferred to the general revenues of the District of Columbia. Expenditures from such fund may be made only upon vouchers which have been certified by said Armory Board and which have been approved before payment by the Auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed: *Provided*, That the Disbursing Officer of the District of Columbia is authorized to advance to the Armory Board, upon requisitions previously approved by the Accounting Officer of the District of Columbia, sums of money not to exceed \$15,000 at any one time to be used by the Armory Board for its office and sundry expenses and for change-making purposes in connection with the secondary purposes of 2-1701 to 2-1710, and in connection with the operation of the stadium and related motor-vehicle parking areas pursuant to sections 2-1720 to 2-1729: *Provided further*, That an amount not to exceed \$10,000 in any fiscal year shall be available for promotional expenses in the furtherance of the secondary purposes of 2-1701 to 2-1710, and of the purposes of sections 2-1720 to 2-1729, and the certificate of the Armory Board shall be sufficient voucher for such expenditure. There is hereby authorized to be appropriated annually such sum as may be required to supply any deficiency in the Armory Board working capital fund. Revenues resulting from the operation of concessions within the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, which have been held by the

District of Columbia National Guard pending enactment of legislation are hereby transferred to the canteen fund of the District of Columbia National Guard. (June 4, 1948, 62 Stat. 341, ch. 418, § 8; Aug. 4, 1955, 69 Stat. 498, ch. 562, § 1; July 28, 1958, 72 Stat. 423, Pub. L. 85-561, § 2(a); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 2.)

AMENDMENTS

1959—Section 2 of the act of September 23, 1959, amended the section by inserting the phrase "and related motor-vehicle parking areas" to precede the words "pursuant to sections etc." in the first proviso.

1958—Section 2 (a) of the act of July 28, 1958, cited to text amended the section by changing \$50,000 to \$100,000 wherever same appeared; struck out the clause relating to \$11,000 in the first proviso and substituted the language as above set out; further struck out the provision in the second proviso relating to \$3,000 for promotional expenses and amended the same to read as above set out.

1955—Act of August 4, 1955, amended the section by striking the proviso in the fifth sentence thereof and inserting in lieu thereof the two new provisos as above set out.

EFFECTIVE DATE OF AMENDMENTS

1958—The amendments made by section 2 (a) of the act of July 28, 1958, cited to text, were made effective by section 2 (b) of the same act "on the first day of the first month which begins after the date of enactment of this Act." [Aug. 1, 1958.]

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of approving the vouchers and requisitions described in the above section were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

See the note under section 2-1219 concerning the Department of General Administration, the Finance Office, and the Accounting Officer.

§ 2-1710. Yearly financial statement and report of activities—Recommendations.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. The function of certifying as to the accuracy of the yearly financial statement of the Armory Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

DISTRICT OF COLUMBIA STADIUM

§ 2-1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.

In order to provide the people of the District of Columbia with a stadium suitable for holding athletic events and other activities and events of a

nature requiring such a facility, the Armory Board (hereinafter referred to as the "Board"), created by section 2-1702, is hereby authorized to construct, maintain, and operate a stadium with a seating capacity of not to exceed fifty thousand, on a site in the District of Columbia determined in accordance with provisions of section 2-1721. In the event the Board exercises the authority vested in it by this section, such stadium shall be constructed substantially in accordance with the plans for such stadium contained in the Praeger-Kavanagh-Waterbury survey entitled "Engineering and Economic Study, District of Columbia Stadium" dated March 31, 1958. The Board is authorized to provide for the construction of such stadium by such means as it determines will most effectively carry out this Act (including, but not limited to, a negotiated contract). (Sept. 7, 1957, 71 Stat. 619, Pub. L. 85-300, § 2; July 28, 1958, 72 Stat. 421, Pub. L. 85-561, § 1(1, 2); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(1).)

AMENDMENTS

1959—Section 1(1) of the act of September 23, 1959, added the last sentence to the section.

1958—Section 1 (1, 2) of the act of July 28, 1958, cited to text, amended the section by striking out the phrase "including necessary motor vehicle parking areas" and also amended the last sentence to read as above set out.

POPULAR NAME

Section 1 of the act of September 7, 1957, cited to text, provides that this act (classified to sections 2-1720 to 2-1728) may be cited as the "District of Columbia Stadium Act of 1957."

§ 2-1721. Acquisition of site by Secretary of the Interior—Construction, maintenance and operation by Board.

The Secretary of the Interior is authorized and directed to acquire by gift, purchase, condemnation, or otherwise, all real property within the boundaries of the East Capitol Street site, as established in the first paragraph under the heading "(2) East Capitol Street Site" contained in the National Capital Planning Commission report entitled "Preliminary Report on Sites for National Memorial Stadium" dated November 8, 1956, and thereafter, acting under authority of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916, as amended (16 U. S. C. 1 and the following), the Secretary of the Interior shall enter into a contract with the Board for the construction, maintenance, and operation of the stadium (including the operation and maintenance of motor-vehicle parking areas) on such East Capitol Street site, except that such contract may be for a term of not more than thirty years. The Secretary of the Interior is authorized and directed to construct and prepare in areas A, C, D, and E only, on such site, as such areas are indicated on National Capital Parks Map numbered 1.7-146, motor vehicle parking areas, including driveways, walks, lighting, and landscaping, at a total cost not to exceed \$2,660,000. (Sept. 7, 1957, 71 Stat. 619, Pub. L. 85-300, § 3; July 28, 1958, 72 Stat. 421, Pub. L. 85-561, § 1 (3); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(2, 3).)

AMENDMENTS

1959—Section 1 (2, 3) of the act of September 23, 1959, amended the section as follows:

(1) Inserted the parenthetical clause into the first sentence beginning with "including" and ending with "areas".

(2) Added the last sentence thereto.

1958—Section 1 (3) of the act of July 28, 1958, cited to text, struck out the words beginning with "upon the request" to the end of the section and substituted the words above set out in their place.

§ 2-1722. Bonds—Issuance of by Board to pay cost of stadium—Registration of bonds—Redemption—Sale of bonds—Exemption of bonds from taxation.

(a) The Board is hereby authorized to provide for the payment of the cost of preliminary engineering and economic surveys relating to the stadium, and for the payment of the cost of planning, designing and constructing such stadium, and to provide funds for the operation and maintenance of such stadium, and for the payment of interest on the bonds authorized herein during the period of construction and during the 12-month period following completion of construction of the stadium, by an issue or issues of negotiable bonds of the Board, bearing interest, payable annually or semiannually, as the Board shall determine, at a rate not exceeding such rate as shall be approved by the Secretary of the Treasury. All such bonds may be registered as to principal alone or both principal and interest, shall be payable as to principal within not to exceed thirty years from the date thereof, shall be in such denominations, shall be executed in such manner, and shall be payable in such medium and at such place or places as the Board may determine, and the face amount thereof shall be so calculated as to produce, at the price of their sale, the cost of the stadium constructed pursuant to sections 2-1720 to 2-1729. The Board may reserve the right to redeem any or all of the bonds before maturity in such manner and at such price or prices not exceeding 105 per centum of the face value and accrued interest as may be fixed by the Board prior to the issuance of the bonds. The Board when it deems advisable may issue refunding bonds to refinance any outstanding bonds, and interest thereon, at maturity or before maturity when called for redemption, except that such refunding bonds shall mature within not to exceed thirty years from the date thereof, or not to exceed fifty years from September 7, 1957, whichever shall first occur.

(b) The bonds may be sold at not less than par. If the proceeds of the bonds shall exceed the cost, the excess shall be placed in the fund created by section 2-1724 for the payment of the principal and interest of such bonds. Prior to the preparation of definitive bonds the Board may, under like restrictions, issue temporary bonds, or may, under like restrictions, issue temporary bonds or interim certificates without coupons, of any denomination whatsoever, exchangeable for definitive bonds when such bonds that have been executed are available for delivery.

(c) All bonds, or other securities, issued by the Board under authority of sections 2-1720 to 2-1729, shall be exempt both as to principal and interest,

from all taxation (except estate and inheritance taxes) now or hereafter imposed by the District of Columbia. (Sept. 7, 1957, 71 Stat. 619, Pub. L. 85-300, § 4; July 28, 1958, 72 Stat. 421, Pub. L. 85-561, § 1 (4-8).)

AMENDMENTS

1958—Section 1 (4-8) of the act of July 28, 1958, cited to text, made the following amendments to the section:

(1) Struck out the first sentence in subsection (a) and amended it to read as above set out.

(2) Struck out from the second sentence of subsection (a) the words, "but such cost shall not exceed \$6,000,000."

(3) In the fourth sentence of subsection (a) inserted the words "and interest thereon" to follow the words "outstanding bonds" and struck out all after "occur" to the end of the sentence.

(4) Struck out the last two sentences of subsection (a).

(5) In subsection (c) struck out the word "obligations" and substituted in lieu thereof the word "securities", and also struck the words "by the United States, or".

§ 2-1723. Authority of Board outlined.

In order to carry out the purposes of sections 2-1720 to 2-1729, The Board is hereby authorized, without regard to any other provision of law, but subject to any contract entered into with the Secretary of the Interior under section 1721—

(1) to determine all questions concerning the use of the stadium for the purposes of sections 2-1720 to 2-1729;

(2) to enter into contracts and agreements with the District of Columbia and the Federal departments, bureaus, establishments, and offices, and the Act of March 4, 1915, as amended (31 U. S. C. 686), is hereby made applicable to such contracts;

(3) to acquire by purchase or lease, equipment, appliances, facilities, and property of any kind necessary or desirable to carry out the purposes of sections 2-1720 to 2-1729, and to sell or dispose of any such property so acquired when in its judgment it shall be advantageous to do so, except that no contract for more than \$3,000 shall be entered into for the purpose of this paragraph without competitive bidding;

(4) to make such structural and other changes in the stadium as it may deem necessary or desirable for carrying out the purposes of sections 2-1720 to 2-1729;

(5) to light, operate and maintain motor-vehicle parking lots;

(6) to operate or contract for the operation of such concessions, including the checking of clothing and the sale of beverages and food as the Board may deem appropriate to the purposes for which the stadium may be rented or leased;

(7) to furnish such services to renters, lessees, and other occupants of the stadium as in its judgment are necessary or suitable for carrying out the purposes of sections 2-1720 to 2-1729;

(8) to rent or lease from time to time for any of the purposes of sections 2-1720 to 2-1729, all or any part or parts of the stadium including any or all structures, equipment, or facilities of the stadium, at such rental values and for such periods of time as the Board shall determine;

(9) to carry public-liability insurance protecting the Board, and the members, officers, and employees

thereof engaged in operating and maintaining the stadium, and in operating and maintaining the motor-vehicle parking areas in connection therewith; and to require tenants or lessees of the stadium to carry public-liability insurance protecting the interests of such tenants or lessees;

(10) to accept the gratuitous services of such persons as may volunteer to aid in the conduct of its activities.

(11) to enter into contracts, contingent or otherwise, for expert, professional, and other personal services, and for printing, engraving, supplies, or any items or services necessary and incident to the preparation and sale of bonds, to be paid out of the proceeds of the sale of such bonds. (Sept. 7, 1957, 71 Stat. 620, Pub. L. 85-300, § 5; July 28, 1958, 72 Stat. 421, 422, Pub. L. 85-561, § 1 (9-11); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(4, 5).)

AMENDMENTS

1959—Section 1 (4, 5) of the act of September 23, 1959, amended par. 5 to read as above set out and inserted into Par. 9 after the word "stadium" the phrase beginning with "and in" and ending with "therewith".

1958—Section 1 (9-11) of the act of July 28, 1958, amended the section as follows:

(1) Added to the first paragraph the words "but subject to any contract entered into with the Secretary of the Interior under section 1721."

(2) Struck out in par. (5) the words beginning with "on such land" to the end of the paragraph.

(3) Added to the section a new paragraph numbered (11)

§ 2-1724. Deposit of receipts into operating fund—Use of funds—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.

(a) The Board shall place into an operating fund all receipts derived from the exercise by the Board of the powers granted by sections 2-1720 to 2-1729. All records and accounts relating to the operations, revenues, expenses, and costs of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium shall be kept separate and distinct from the records and accounts relating to the operations, revenues, expenses, and costs of the District of Columbia National Guard Armory. The Board is authorized, from time to time, to make advances for the operation and maintenance of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium from the armory board working capital fund established in section 2-1708, but not to exceed a total of \$25,000 at any one time. Such advances shall be reimbursed from the operating fund created by this subsection. The operating fund shall be used for constructing, operating, maintaining, and repairing the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium. After payment or provision for payment from the operating fund of all costs for construction, maintenance, repair, and operation of the stadium and the lighting, operation, and maintenance, of motor-vehicle

parking areas in connection with such stadium and the reservation of an amount of money estimated to be sufficient for the maintenance, repair, and operation during the ensuing period of not more than twelve months, the remainder of the receipts derived from the exercise by the Board of the powers granted by sections 2-1720 to 2-1729 shall be placed in a sinking fund. Such sinking fund shall be used for the following purposes and in the following order of priority: (1) to pay the interest on and principal of bonds and other securities issued under authority of section 2-1722; (2) to reimburse the District of Columbia for any moneys advanced from its revenues and any amounts borrowed by the Commissioners of the District of Columbia from the Secretary of the Treasury, including interest on such borrowed amounts, to pay interest on or principal of bonds issued by the Board; and (3) to redeem bonds before maturity as provided in section 2-1722, or to repurchase bonds before maturity. All revenues from the operation of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium are hereby pledged to the uses and to the application thereof as heretofore in this section required. An accurate record of the cost of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium, the expenditures for maintenance and operation, and of rentals and lease receipts shall be kept and shall be available for the information of all interested persons.

(b) Within a reasonable time after the construction of the stadium, the Board shall file with Congress and the Board of Commissioners of the District of Columbia a sworn itemized statement showing the cost of constructing the stadium, and the amount of bonds, debentures, or other evidences of indebtedness issued in connection with the construction of such stadium. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85-300, § 6; July 28, 1958, 72 Stat. 422, Pub. L. 85-561, § 1 (12); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(6, 7).)

AMENDMENTS

1959—Section 1 (6, 7) of the act of September 23, 1959, amended the section by inserting the phrase "and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium" in six places in subsection (a) to follow the word stadium wherever it appears, and also by striking out "maintaining and operating it" and inserting "maintenance and operation" in lieu thereof

1958—Section 1 (12) of the act of July 28, 1958 amended subsection (a) to read as above set out.

§ 2-1725. Title to stadium to vest in United States—Date.

After payment of the bonds and interest or after a sinking fund sufficient for such purpose shall have been provided and shall be held solely for that purpose, but in any event not later than fifty years from September 7, 1957, all right, title, and interest in and to the stadium constructed under sections 2-1720 to 2-1729 shall vest in the United States. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85-300, § 7; July 28, 1958, 72 Stat. 422, Pub. L. 85-561, § 1 (13).)

AMENDMENTS

1958—Section 1 (13) of the act of July 28, 1958, amended the section by striking out all after September 7, 1957, and inserting the new matter above set out.

§ 2-1726. Employment of personnel and fixing of compensation—Delegation of authority.

(a) The Board is authorized to employ and fix compensation of such personnel as may be necessary to carry out the purposes of sections 2-1720 to 2-1729, without regard to the provisions of the civil-service laws and the Classification Act of 1949, as amended.

(b) Under the direction of the Board and with the written authorization signed by the members thereof, an employee of the Board may exercise such of the powers vested in the Board by section 2-1723 as the Board shall determine. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85-300, § 8.)

§ 2-1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Commissioners may borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.

Nothing contained in sections 2-1720 to 2-1729 shall be construed to authorize or permit the Board or any member thereof to create any obligation or incur any liability other than such obligations and liabilities as are dischargeable solely from funds contemplated to be provided by sections 2-1720 to 2-1729. No obligation created or liability incurred pursuant to sections 2-1720 to 2-1729 shall be a personal obligation or liability of any member or members of the Board but shall be chargeable solely to the funds contemplated to be provided by sections 2-1720 to 2-1729. Whenever the Board certifies to the Commissioners of the District of Columbia that there will not be a sufficient amount in the sinking fund created by section 2-1724 (a) to pay amounts becoming due and payable during any fiscal year on account of interest on or retirement of the bonds, the Commissioners of the District of Columbia shall include in the budget estimates for the District of Columbia for such fiscal year such amounts out of the revenues of the District of Columbia as may be necessary to insure the payment of such interest or the retirement of such bonds. In the event an appropriation has not been made by the time the amount becomes due and payable on account of interest on or retirement of the bonds, the Commissioners of the District of Columbia are authorized to borrow from the Secretary of the Treasury the amounts required, to bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on current marketable obligations of the United States of comparable maturities as of the last day of the month preceding the month in which the amount is borrowed. The Secretary of the Treasury is authorized and directed to lend to said Commissioners the amounts required hereunder and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the

purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include any loans to said Commissioners hereunder. Amounts borrowed by said Commissioners from the Secretary of the Treasury pursuant to this section and the interest thereon shall be repaid promptly from the funds appropriated pursuant to authority in this section and from any other appropriation available for such purpose. Amounts appropriated for payment of interest on or retirement of bonds and amounts borrowed by the Commissioners for such purpose shall be advanced by the Commissioners to the Board and shall be placed by the Board in such sinking fund. All bonds and other securities issued by the Board under authority of sections 2-1720 to 2-1729 are hereby guaranteed as to both principal and interest by the United States. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85-300, § 9; July 28, 1958, 72 Stat. 422, Pub. L. 85-561, § 1 (14).)

AMENDMENTS

1958—Section 1 (14) of the act of July 28, 1958, cited to text, amended the last sentence to read as above set out.

§ 2-1728. Filing of annual reports with Congress.

The Board shall file with the Congress in January of each year a financial statement certified as to accuracy by the Commissioners of the District of Columbia, or their designated agent, a report of the activities and business at the stadium, and of the operation and maintenance of the motor-vehicle parking areas in connection therewith, during the preceding fiscal year and recommendations to Congress as to future control and use of the stadium. (Sept. 7, 1957, 71 Stat. 622, Pub. L. 85-300, § 10; July 28, 1958, 72 Stat. 423, Pub. L. 85-561, § 1(15); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(8).)

AMENDMENTS

1959—Section 1(8) of the act of September 23, 1959, amended section by striking out after "stadium" the phrase beginning with "and of" and ending with "therewith".

1958—Section 1 (15) of the act of July 28, 1958, amended the section so as to require certification as to accuracy by the Commissioners, or their designated agent

§ 2-1729. "Stadium", defined.

As used in sections 2-1720 to 2-1729 the term "stadium" includes all equipment, appliances, facilities, and property of any kind, necessary to carry out the purposes of sections 2-1720 to 2-1729. (Sept. 7, 1957, 71 Stat. 622, Pub. L. 85-300, § 11, as added July 28, 1958, 72 Stat. 423, Pub. L. 85-561, § 1(16); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86-378, § 1(9).)

AMENDMENTS

1959—Section 1(9) of the act of September 23, 1959, struck out the words "necessary motor vehicle parking areas, and"

Chapter 18.—PROFESSIONAL ENGINEERS

§ 2-1802. Definitions.

NOTES TO DECISIONS

CORPORATIONS MAY NOT QUALIFY

District of Columbia statutory requirements for professional engineers can be met by natural persons only.

and a corporation cannot be licensed as professional engineer. *Potomac Engineers, Inc. v. Walser et al.* (1954, 127 F. Supp. 41). (Aff'd, 1955, 96 U. S. App. D. C. 64, 223 F. 2d 356).

PRACTICE OF ENGINEERING

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653.)

REGULATIONS MUST BE REASONABLE

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REPEAL BY IMPLICATION

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

§ 2-1806. Compensation of members of board.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

NOTES TO DECISIONS

REHEARING AFTER APPEAL

Where District Court, on applicant's appeal from action of District of Columbia Board of Registration for Professional Engineers in denying application for registration, remanded case for rehearing, remand should have been without qualification so that Board might, after hearing additional evidence, make initial decision on enlarged factual situation. *Daniel C. Walser et al., etc. v. Andre Merle* (1955, 97 U. S. App. D. C. 118, 228 F. 2d 465).

§ 2-1808. General powers of Board.

NOTES TO DECISIONS

CORPORATIONS MAY NOT QUALIFY

District of Columbia statutory requirements for professional engineers can be met by natural persons only, and a corporation cannot be licensed as professional

engineer. *Potomac Engineers, Inc. v. Walser et al.* (1954, 127 F. Supp. 41).

§ 2-1809. Complaints — Hearings — Proceedings — Appeals.

NOTES TO DECISIONS

REHEARING AFTER APPEAL

Where District Court, on applicant's appeal from action of District of Columbia Board of Registration for Professional Engineers in denying application for registration, remanded case for rehearing, remand should have been without qualification so that Board might, after hearing additional evidence, make initial decision on enlarged factual situation. *Daniel C. Walser et al., etc. v. Andre Merle* (1955, 97 U. S. App. D. C. 118, 228 F. 2d 465).

§ 2-1810. Exemptions.

NOTES TO DECISIONS

PRACTICE OF ENGINEERING

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REGULATIONS MUST BE REASONABLE

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

REPEAL BY IMPLICATION

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al. v. Robert E. McLaughlin et al.* (1957, 153 F. Supp. 653).

§ 2-1813. Fees—Payment of expenses—Audit.

* * * * *

The amount of the fees prescribed in this chapter is that fixed by the following schedule:

* * * * *

(h) The biennial registration renewal fee for professional engineer is \$6.00 biennially.

* * * * *

(Sept. 19, 1950, 64 Stat. 864, ch. 953, § 13.)

INCREASE OF FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

In accordance with this authority the Commissioners increased the fee for renewal registration in paragraph (h) from \$2.00 to \$6.00 biennially effective September 14, 1954.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. The function of the annual audit of accounts of the District of Columbia Board of Registration for Professional Engineers was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 19.—COUNCIL ON LAW ENFORCEMENT

Sec.

2-1901. Council on Law Enforcement in the District of Columbia.

§ 2-1901. Council on Law Enforcement in the District of Columbia.

(a) The Council on Law Enforcement in the District of Columbia (referred to in this section as the "Council") is hereby created.

(b) The Council shall be composed of the following members:

- (1) The President of the Board of Commissioners;
- (2) The Chief of Police;
- (3) The Chief of the United States Park Police;
- (4) The United States attorney;
- (5) The corporation counsel;
- (6) A United States commissioner for the District;
- (7) The Director of the Department of Corrections;
- (8) The Parole Executive of the Board of Parole of the District;
- (9) The United States marshal for the District;
- (10) One person appointed by the chief judge of the district court;
- (11) One person appointed by the chief judge of the municipal court;
- (12) The judge of the juvenile court of the District of Columbia;
- (13) One person appointed by the Bar Association of the District of Columbia;
- (14) One person appointed by the Washington Bar Association; and
- (15) One person appointed by the Washington Criminal Justice Association.

(c) The Council shall make a continuing study and appraisal of crime and law enforcement in the District, and shall make a report to the Senate and the House of Representatives at the beginning of each regular session of Congress.

(d) The Council shall select a chairman from among its members. The Council shall meet at regular intervals at least four times annually, at times to be fixed by the chairman. A special meet-

ing may be held at any time upon the call of the chairman. The first meeting of the Council shall be called by the President of the Board of Commissioners, who shall preside until a chairman is selected. (June 29, 1953, 67 Stat. 101, ch. 159, § 401.)

Chapter 20.—PAWNBROKERS

Sec.

2-2001. Definitions.

2-2002. Licenses required of pawnbrokers.

2-2003. Appointment of attorney and application for licenses.

2-2004. Bond provisions—Annual renewal.

2-2005. Issuance of license.

2-2006. Revocation, suspension, and renewal of licenses.

2-2007. Enforcement provisions—Commissioners to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records. Review of Commissioners' decisions.

2-2008. Advertising—Statement of rates.

2-2009. Investigation of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.

2-2010. Charging, demanding or receiving interest, discount, fee or other charge, except as authorized by law prohibited—Payment of fees by licensees for performance of prohibited acts—Nonvalidity of instruments for loans made in violation of law—Loans made in violation of sections 2-2001 to 2-2019 against public policy—Loans outside of District.

2-2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioners—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.

2-2012. Pawnbroker to deliver accurate memorandum of loan transaction to borrower.

2-2013. Sale of pledge.

2-2014. Publication of notice of sale.

2-2015. Disposition of surplus moneys.

2-2016. Penalties—Loans in violation of sections 2-2001 to 2-2019 void. Pledged goods to be returned.

2-2017. Rules and regulations.

2-2018. Nonapplicability to certain financial institutions or Federal agencies.

2-2019. Separability of provisions.

§ 2-2001. Definitions.

As used in this chapter—

(a) The term "person" means an individual, firm, voluntary association, joint-stock company, incorporated society, or corporation.

(b) The term "District" means the District of Columbia.

(c) The term "Commissioners" means the Commissioners of the District or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter: *Provided*, That for the purposes of subsection (e) of section 2-2007 no such agent shall, by way of appeal, review his own action, decision, or ruling.

(d) The term "pawnbroker" means any person who shall in any manner lend or advance money or other things for profit on the pledge and possession of personal property or other valuable thing, other than securities or written or printed evidences of indebtedness or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price,

and shall include all pawnbrokers referred to in sections 4-148, 4-149, and 4-150. (Aug. 6, 1956, 70 Stat. 1036, ch. 970, § 1.)

CROSS REFERENCE

1956—Section 19 of the act of August 6, 1956, cited to text, repeals the provisions of sections 26-601 to 26-611 "insofar as the same applies to the business of lending money on the security of the pledge and possession of tangible personal property."

EFFECTIVE DATE

1956—Section 21 of the act of August 6, 1956, cited to text, provides that the act shall take effect at the expiration of sixty days after the date of its approval, which would make the act effective on October 5, 1956.

§ 2-2002. Licenses required of pawnbrokers.

(a) No person shall engage in business as a pawnbroker except as authorized in this chapter and without first obtaining a license from the Commissioners as hereinafter provided.

(b) No person, other than a licensee under this chapter, shall display any sign or other device in or about any business premises, or in any advertising matter, which in any manner resembles the emblem or sign commonly used by pawnbrokers nor display any sign which is calculated to deceive, nor use the word "pawnbroker" in or about any business premises or in any advertising matter, nor shall any such person hold himself out to the public to be a pawnbroker either by advertising, soliciting, signs, or otherwise. (Aug. 6, 1956, 70 Stat. 1036, ch. 979, § 2.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2003. Appointment of attorney and application for licenses.

(a) No license shall be issued to any person unless and until such person shall, in writing and in the form prescribed by the Commissioners, appoint the Commissioners as his true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served. A copy of any such process or notice so served upon the Commissioners shall be forthwith sent by registered mail by the plaintiff or his attorney to the defendant at his residence or his place of business.

(b) Each application for a license under this chapter shall be in writing, under oath or affirmation, to the Commissioners in such form as they may prescribe. Such application shall contain (1) in the case of an individual, his name and the address of his residence and place of business, (2) in the case of a firm or voluntary association, the name and address of every member thereof and the address of the place where such business is to be conducted, (3) in the case of a joint-stock company, incorporated society, or corporation, the names and addresses of the officers and directors thereof and the address of the place where such business is to be conducted, and (4) such additional information as the Commissioners may prescribe.

(c) Each applicant shall prove to the satisfaction of the Commissioners that he has available, for use in the business of making loans authorized by this

chapter at the location specified in his application, cash capital of at least \$20,000.

(d) Upon the filing of any such application the applicant shall pay to the Commissioners the sum of \$50 as a fee for investigating the application, which sum shall be retained by the District whether such application is approved or disapproved. (Aug. 6, 1956, 70 Stat. 1036, ch. 970, § 3.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2004. Bond provisions—Annual renewal.

(a) Each applicant shall file with his application a bond running to the District in the sum of \$5,000 with two or more sufficient sureties, whose liability as such securities shall not exceed the said sum in the aggregate; except that the execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business in the District shall be equivalent to the execution thereof by two sureties, but such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. Such bond shall be approved by the Commissioners and conditioned upon the compliance by the applicant with all the provisions of this title and all rules and regulations lawfully made pursuant thereto. Any person injured by the noncompliance with any such provision, rule, or regulation by any licensee under this chapter may maintain a suit in his own name in any court of competent jurisdiction and recover on the bond such damages as shall be adjudged by such court together with costs of such suit. Recovery upon any such bond shall not preclude recovery against such licensee for any liability in excess of the amount recovered upon the bond, and such recovery shall not be held to extinguish any remedy under other law.

(b) The bond or bonds which the licensee is required to file hereunder shall be renewed and refiled annually at the time of making payment of the annual license fee. If the Commissioners shall find that any such bond has for any reason become insecure or exhausted, an additional bond in the sum of not more than \$5,000 shall be filed by the licensee within ten days after written demand therefor by the Commissioners. (Aug. 6, 1956, 70 Stat. 1037, ch. 970, § 4.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2005. Issuance of license.

(a) If the Commissioners approve the bond filed by the applicant and the form of the application, and find after investigation (1) that the financial responsibility, experience, character, and general fitness of such applicant, and of the members thereof if the applicant is a firm or voluntary association, and of the officers and directors thereof if the applicant is a joint-stock company, incorporated society, or corporation are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance

with the purposes of this chapter; (2) that permitting such applicant to engage in such business will promote the convenience and advantage of the community; and (3) that the applicant has available for use in such business at the location specified in the application cash capital of at least \$20,000, the Commissioners shall, upon payment by the applicant of a license fee of \$500, issue to the applicant a license to make such loans in accordance with the provisions of this chapter at the location specified in such application; except that if any such license is issued after the thirtieth day of April of any year the fee for such license shall be \$250. If the Commissioners do not so find after investigation they shall notify the applicant thereof and return the bond filed with the application. Within sixty days from the date of filing the application for license, accompanied by the investigation fee and bond required by this chapter the Commissioners shall either issue or refuse to issue such license, but no applicant shall be denied a license until after a due hearing by the Commissioners, at which the applicant shall have a reasonable opportunity to be heard and to produce evidence in support of his application. If the application be denied the Commissioners shall within twenty days thereafter prepare a written decision and findings with respect thereto containing a summary of the evidence and the reasons supporting the denial and forthwith serve upon the applicant a copy thereof.

(b) Each license issued under this chapter shall state fully the name of the licensee and the place at which the business is to be conducted under such license. Such license shall be kept conspicuously posted in such place of business. No such license shall be transferable or assignable. Not more than one place of business shall be maintained under the same license, but the Commissioners may issue more than one license to the same licensee upon compliance for each such license with all the provisions of this title applicable to the original issuance of licenses. Whenever a licensee shall desire to change his place of business to another location within the District he shall immediately give written notice thereof to the Commissioners. Upon receipt of such notice the Commissioners shall attach to the license a statement of the change of location and the date thereof, which shall be authority for the operation of such business under such license at the new location.

(c) No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. (Aug. 6, 1956, 70 Stat. 1037, ch. 970, § 5.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2006. Revocation, suspension, and renewal of licenses.

(a) Each license shall remain in full force and effect until the first day of November following the date of issuance unless sooner surrendered by the licensee or suspended or revoked as hereinafter pro-

vided. Application for license for the following year may be made by any licensee within twenty days prior to the first day of November. If the Commissioners are satisfied that no fact or condition then exists which clearly would warrant the Commissioners in refusing to issue a license on an original application the Commissioners are authorized to issue license for the year commencing on the first day of November following the date of such application, upon payment of license fee of \$250.

(b) The Commissioners shall, upon ten days' notice to the licensee stating that they contemplate the revocation or suspension of his license, and, in general, the grounds therefor, revoke or suspend such license, after reasonable opportunity has been afforded to the licensee to be heard, if the Commissioners find (1) that the licensee has failed to maintain in effect the bond or bonds required under this chapter or (2) that the licensee has either knowingly or without the exercise of due care to prevent the same, violated any provision of this chapter or has failed to comply with any rule or regulation lawfully made pursuant thereto, or (3) that any fact or condition then exists which clearly would warrant the Commissioners in refusing to issue a license on an original application. If the license be revoked or suspended the Commissioners shall, within twenty days thereafter, prepare a written decision and findings with respect thereto containing a summary of the evidence and the reasons supporting the revocation or suspension and forthwith serve upon the licensee a copy thereof.

(c) The Commissioners may revoke or suspend only the particular license with respect to which there are grounds for revocation or suspension; but if the Commissioners find that such grounds for revocation or suspension apply or extend to more than one license issued to any person under this chapter, they shall revoke or suspend all the licenses affected thereby.

(d) The licensee may at any time surrender any license issued to him under this chapter upon filing written notice to that effect with the Commissioners.

(e) No revocation, suspension, or surrender of any such license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower, or any bond given by such licensee. (Aug. 6, 1956, 70 Stat. 1038, ch. 970, § 6.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2007. Enforcement provisions—Commissioners to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioners' decisions.

(a) The provisions of this chapter shall be enforced by the Commissioners, who are authorized to make such rules and regulations in addition hereto and not inconsistent herewith, as may be necessary for the enforcement of this chapter. The Commissioners shall make such examination and investigations of the affairs, business, office, and records

of every licensee, and such further examinations or investigations as they shall deem necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. For the purpose of making such examinations or investigations the Commissioners and their duly designated representatives shall have authority to require by subpoena the production of books, papers, and records and the attendance, and examination under oath, of all persons whomsoever whose testimony they may require relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the Municipal Court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11-756 (c).

(b) Each licensee shall annually on or before the fifteenth day of March file with the Commissioners a report giving such information as the Commissioners may require, relevant to the business and operations during the preceding calendar year, of each licensed place of business conducted by such licensee in the District. Such report shall be made under oath and in the form prescribed by the Commissioners. The Commissioners shall make and publish annually an analysis and recapitulation of such reports.

(c) Each licensee shall keep and use in his business and shall preserve for at least three years after making the final entry on any loan recorded therein, such books, accounts, records, or card systems as will enable the Commissioners to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations made pursuant thereto.

(d) The Commissioners are authorized to appoint such assistants, clerks, or other employees as may be required for the purpose of carrying out the provisions of this chapter

(e) Any person aggrieved by any action, decision, or ruling of the Commissioners under this chapter may, within twenty days thereafter, or within twenty days after the service upon such person of any written decision and findings required by this chapter, appeal to the Commissioners for a review thereof. Upon any such review, the Commissioners may affirm, set aside, or modify such action, decision, or ruling. In any such case the Commissioners shall, within ten days thereafter, prepare a written decision and findings with respect thereto, containing a summary of the evidence and the reasons supporting the affirmance, setting aside, or modification, and forthwith serve upon the aggrieved person a

copy thereof. (Aug. 6, 1956, 70 Stat. 1039, ch. 970, § 7.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2008. Advertising—Statement of rates.

(a) No licensee or other person, firm, voluntary association, joint stock company, incorporated society, or corporation shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of \$1,000 or less, which is false, misleading, or deceptive, or, in the case of a licensee, which refers to the supervision of such business by the District of Columbia, or any department or official thereof. The Commissioners may order any licensee to desist from any conduct which they shall find to be a violation of the foregoing provisions.

(b) The Commissioners may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as they may deem necessary to prevent misunderstanding thereof by prospective borrowers. (Aug. 6, 1956, 70 Stat. 1040, ch. 970, § 8.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2009. Investigations of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.

(a) The Commissioners shall investigate from time to time the economic conditions and other factors relating to and affecting the business of making pawnbroker loans under this chapter, and shall ascertain all pertinent facts necessary to determine what maximum rate of interest should be permitted. Upon the basis of such ascertained facts, the Commissioners shall determine and fix by regulation or order a maximum rate of interest in connection with such loans which will induce efficiently managed commercial capital to be invested in such business in sufficient amounts to make available adequate credit facilities to individuals seeking such loans at reasonable rates of interest, and which will afford those engaged in such business a fair and reasonable return upon the assets. The Commissioners may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rate of interest, but, before determining or redetermining any such maximum rate, the Commissioners shall give reasonable notice of their intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto and such notice shall also be published once each week for two consecutive weeks in one or more of the daily newspapers published in the District. Any such changed maximum rate of interest shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower. Until such time as a different rate is fixed by the Commissioners

in accordance with the authorization contained in this section, every licensed pawnbroker may contract for and receive on any loan of money, not exceeding 2 per centum per month, or fraction thereof, upon any loan not exceeding the sum of \$200, or more than 1 per centum per month or fraction thereof, upon any loan exceeding \$200 and not exceeding \$1,000, and 8 per centum per annum on any loan in excess of \$1,000, under a penalty of \$100 for each such offense: *Provided*, That pawnbrokers may ask, demand, and receive a minimum charge in lieu of interest of 50 cents.

(b) The borrower may pay all or any part of any loan made pursuant to this chapter at any time before the date of maturity thereof, but any such payment may first be applied by the licensee to all interest unpaid up to the date of such payment. (Aug. 6, 1956, 70 Stat. 1040, ch. 970, § 9.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2010. Charging, demanding or receiving interest, discount, fee or other charge, except as authorized by law prohibited—Payment of fees by licensees for performance of prohibited acts—Nonvalidity of instruments for loans made in violation of law—Loans made in violation of sections 2-2001 to 2-2019 against public policy—Loans outside of District.

(a) No person, except as authorized by this chapter, shall directly or indirectly, by any device, subterfuge, or pretense, whatsoever, ask, demand, charge, contract for, or receive, or participate, as agent, broker, procurer, intermediary, or volunteer, or in any other capacity, in asking, demanding, charging, contracting for, or receiving any interest, discount, fee, charge, or other consideration which in the aggregate is greater than the interest which is permitted by sections 28-2701 to 28-2703, upon any loan or application for loan in the amount or of the value of \$1,000, or less, whether or not such loan is made.

(b) No person engaged in the business regulated by this chapter shall pay, directly or indirectly, to any person, any money, service, or thing of value for the doing of any of the acts prohibited in the subsection (a) of this section: *Provided*, That this subsection shall apply only to acts done or performed with reference to loan transactions or applications for loans in sums of \$1,000 or less, or in inducing or seeking to induce any person to borrow in sums of \$1,000 or less.

(c) No instrument evidencing a loan made within the District in violation of the provisions of this chapter shall be valid or enforceable in the District by the lender or by any other holder thereof who acquired the same with actual knowledge that said loan was made in violation of the provisions of this chapter or with knowledge of such facts that his action in taking such instrument amounted to bad faith.

(d) Any loan made by any person not licensed under this chapter for which there has been charged, contracted for, or received a greater rate of interest, discount, or consideration than the interest which

is permitted by sections 28-2701 to 28-2703, and any loan made by a licensee under this chapter for which there has been charged, contracted for, or received a greater rate of interest, discount, or consideration than licensees are permitted to charge, contract for, or receive under this chapter is hereby declared to be against the public policy of the District. No such loan made outside the District shall be enforced in the District and every person in anywise participating therein in the District shall be subject to the provisions of this chapter, except that the provisions of this subsection shall not apply to a loan legally made in any State under and in accordance with the provisions of a duly enacted pawnbroker law. (Aug. 6, 1956, 70 Stat. 1041, ch. 970, § 10.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioners—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.

(a) Every pawnbroker shall keep a book in which shall be fairly written, at the time of each loan, an accurate account and description of the goods, article, or thing pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging the said goods, article, or thing, together with a particular description of such person, including complexion, color of eyes and hair, and his or her height and general appearances.

(b) The said book shall at all reasonable times be open to the inspection of the Commissioners. It shall be the duty of every pawnbroker, and of every person in his employ, to admit to his premises during business hours any member of the Metropolitan Police Force of the District of Columbia as aforesaid to examine any pledge or pawn book or other record on the premises, as well as the articles pledged, purchased, or received, and to search for and take possession of any article known by him to be missing or known or believed by him to have been stolen, without the formality of the writ of search warrant or any other process, which search or seizure is hereby authorized.

(c) Except as to any judicial or other official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the contents of such book.

(d) Every pawnbroker shall, every day, except Sunday, before the hour of eleven o'clock in the forenoon, deliver to the Chief of Police, or his representative, on forms to be prescribed by the Commissioners of the District of Columbia, a legible and correct transcript from the book or books provided for in subsection (a), showing an accurate and complete description of every article or thing received by him, in pawn or pledge, and giving all numbers, marks, monograms, trademarks, manufacturers' names and other marks of identification appearing on the same,

on the business day next preceding, together with the numbers of the pawn ticket issued therefor, the amount of the loan thereon, and the name, residence, and physical description of the person pawning or pledging the said goods, article or thing. (Aug. 6, 1956, 70 Stat. 1041, ch. 970, § 11.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2012. Pawnbroker to deliver accurate memorandum of loan transaction to borrower.

Every pawnbroker shall, at the time of each loan, deliver to the person pawning or pledging any goods, article, or thing a memorandum or note, signed by him, containing the substance of the entry required to be made in his or her book by the last preceding section, excepting as to the description of the person and no charge shall be made or received by any pawnbroker for any such entry, memorandum, or note. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 12.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2013. Sale of pledge.

No pawnbroker shall sell any pawn or pledge until the same shall have remained one year in his possession, unless by consent in writing by the pawner; and all such sales shall be made at public auction and not otherwise, and shall be made or conducted only by an auctioneer licensed by the District of Columbia. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 13.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2014. Publication of notice of sale.

Notice of every such sale shall be published for at least six days previous thereto, in one or more of the daily newspapers of general circulation printed in the District of Columbia, and such notice shall specify the time and place at which such sale is to take place, the name of the auctioneer by whom the same is to be conducted, and a description of the article to be sold, and in addition thereto the pawnbroker shall mail to the pawner a copy of such notice and shall obtain from the postmaster or his authorized agent a certificate showing such mailing, issued pursuant to section 260a of Title 39, U. S. C., and regulations made thereunder. Such certificates shall be deemed to be part of the records of the business of the pawnbroker required by this title to be kept. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 14.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2015. Disposition of surplus moneys.

The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same, and the expenses of the advertisement and sale, shall be paid over by the pawnbroker to the person who would be entitled to redeem the pledge in case no such sale had taken place. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 15.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2016. Penalties—Loans in violation of sections 2-2001 to 2-2019 void—Pledged goods to be returned.

(a) Any individual or any member, officer, director, agent, or employee of any firm, voluntary association, joint-stock company, incorporated society, or corporation who shall violate or participate in the violation of any of the provisions of this chapter shall be punished by a fine of not more than \$300 or by imprisonment for not more than ninety days.

(b) Any contract of loan in the making or collection of which any act shall have been done which constitutes a violation of any of the provisions of this chapter shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever on account thereof. Any person pledging any goods, article, or other thing as security for a loan which is void shall be entitled to the return of such goods, article, or thing without being required to pay any principal, interest, or other charge on account of such void loan. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 16.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2017. Rules and regulations.

The Commissioners are authorized to make and enforce such rules and regulations as they deem necessary to carry out the purposes of this chapter. (Aug. 6, 1956, 70 Stat. 1043, ch. 970, § 17.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2018. Nonapplicability to certain financial institutions or federal agencies.

Nothing in this chapter shall apply to any person, firm, joint-stock company, incorporated society, credit union, or corporation doing business in the District of Columbia under the supervision of the Federal Reserve System, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or the Home Loan Bank Board, or the Federal Savings and Loan Insurance Corporation, or the Department of Health, Education, and Welfare or to loans made by them. (Aug. 6, 1956, 70 Stat. 1043, ch. 970, § 18.)

EFFECTIVE DATE

See note under section 2-2001.

§ 2-2019. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 16, 1956, 70 Stat. 1043, ch. 970, § 20.)

EFFECTIVE DATE

See note under section 2-2001.

Chapter 21.—CHARITABLE SOLICITATIONS

Sec.

2-2101. Definitions.

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- 2-2111. Use of other person's name by registered solicitor—Listing of other person's name in advertisement or other publication—Publication of list of contributors by charitable organizations.
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- 2-2113. Separability.
- 2-2114. Appropriations.

§ 2-2101. Definitions.

As used in this chapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a board, or any agent or agency designated by them to perform any function vested in the Commissioners by this chapter.

(b) The term "registrant" means the holder of a valid certificate of registration duly issued under the terms of this chapter.

(c) "Solicit" and "solicitation" mean the request directly or indirectly for any contribution on the plea or representation that such contribution will or may be used for any charitable purpose, and also mean and include any of the following methods of securing contributions:

- (1) Oral or written request;
- (2) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;
- (3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;
- (4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or where the name of any charitable person is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose.

A "solicitation" as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

(d) "Charitable" means and includes philanthropic, social service, patriotic, welfare, benevolent, or educational (except religious education), either actual or purported.

(e) "Contribution" means and includes alms, food, clothing, money, subscription, credit, property, financial assistance, or donations under the guise of a loan of money or property.

(f) "Person" means any individual, firm, copartnership, corporation, company, association, or joint stock association, church, religious sect, religious denomination, society, organization, or league, and includes any trustee, receiver, assignee, agent, or other similar representative thereof. (July 10, 1957, 71 Stat. 278, Pub. L. 85-57, § 2.)

APPLICABILITY OF REORGANIZATION PLAN NO. 5

Section 14 of the act of July 10, 1957, provides:

SEC. 14. Where any provision of this Act refers to an office or agency abolished by Reorganization Plan Number 5 of 1952 (66 Stat. 824), such reference shall be deemed to be the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act shall be construed as a limitation on the authority vested in the Commissioners by Reorganization Plan Number 5 of 1952.

EFFECTIVE DATE

Section 17 of the act of July 10, 1957, cited to text, provides that sections 2-2109, 2-2110 and 2-2114 shall take effect upon approval of this act and the remainder of the act takes effect 60 days after promulgation of the first regulation under section 2-2110.

POPULAR NAME

Section 1 of the act of July 10, 1957, cited to text, provides: "That this Act may be cited as the 'District of Columbia Charitable Solicitation Act'."

§ 2-2102. Powers of Commissioners.

(a) The Commissioners are authorized and empowered—

- (1) to administer and enforce the provisions of this chapter;
- (2) to investigate the allegations of any application for a certificate of registration;
- (3) to have access to and inspect and make copies of all the financial books, records, and papers of any person making any solicitation or on whose behalf any solicitation is made;
- (4) to investigate at any time the methods of making or conducting any solicitation;
- (5) to issue a certificate of registration to any person filing an application pursuant to this chapter;
- (6) to suspend or revoke any certificate of registration or solicitor information card, on the ground that the holder of such certificate or card has violated any provision of this chapter or any regulation promulgated pursuant thereto. The Commissioners shall give to the interested person or persons an opportunity for a hearing after reasonable notice thereof before suspending or revoking any such certificate or card;
- (7) to prescribe by regulation the form of and the information to be contained in the solicitor information cards required by this chapter, and to prescribe the manner of reproduction and authentication of such cards; and

(8) to publish, in any manner they deem appropriate, the results of any investigation authorized by this chapter. The Commissioners shall, in publishing the results of any such investigation, have power to publish information concerning the officers and members of the governing board of any organization coming within the purview of this chapter: *Provided*, That such information shall not include membership and contribution lists of any such organization.

(b) The Commissioners are authorized to prescribe and collect fees for the filing of applications, issuance of certificates of registration, and any other service which this chapter authorizes to be performed by the Commissioners. The Commissioners shall fix such fees in such amounts as will, in their judgment, approximate the cost to the District of Columbia of such services. In fixing such fees the Commissioners may, in their discretion, prescribe either uniform fees or varying schedules of fees based on actual or estimated amounts solicited or to be solicited by registrants or applicants for certificates of registration. No fees may be fixed pursuant to this section until after a public hearing has been held thereon pursuant to reasonable notice thereof. (July 10, 1957, 71 Stat. 278, Pub. L. 85-87, § 3.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.

(a) No person shall solicit in the District of Columbia unless he holds a valid certificate of registration authorizing such solicitation.

(b) The provisions of this chapter shall not apply to any person making solicitations, including solicitations for educational purposes, solely for a church or a religious corporation or a corporation or an unincorporated association under the supervision and control of any such church or religious corporation: *Provided*, That such church, religious corporation, corporation or unincorporated association is an organization which has been granted exemption from taxation under the provisions of section 501 of the Internal Revenue Code of 1954: *Provided further*, That such exemption from the provisions of this chapter shall be in effect only so long as such church, religious corporation, corporation or unincorporated association shall be exempt from taxation under the provisions of section 501 of the Internal Revenue Code of 1954.

(c) The provisions of subsection (a) of this section and sections 2-2104, 2-2105, 2-2106 and 2-2108 shall not apply to any person making solicitations (1) solely for the American National Red Cross or (2) exclusively among the membership of the soliciting agency.

(d) The Commissioners may by regulation prescribe the terms and conditions under which solicitations in addition to those enumerated in subsection (b) of this section may be exempted from the provisions of subsection (a) of this section and

sections 2-2105 and 2-2106: *Provided*, That no exemption granted under authority of this subsection (d) shall exceed for any calendar year \$1,500 in money or property. (July 10, 1957, 71 Stat. 279, Pub. L. 85-87, § 4.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2104. Application for and issuance of certificate.

(a) Application for such certificate of registration shall be made upon such form or forms as shall be prescribed by the Commissioners, shall be sworn to and shall be filed with the Commissioners at least fifteen days prior to the time when the certificate of registration applied for shall become effective. Each such application shall contain such information as the Commissioners shall by regulation require.

(b) If, while any application is pending, or during the term of any certificate of registration granted thereon, there is any change in fact, policy, or method from the information given in the application, the applicant or registrant shall within ten days after such change report the same in writing to the Commissioners.

(c) The Commissioners shall issue a certificate of registration within ten days after the filing of an application therefor: *Provided*, That, whenever in the opinion of the Commissioners the application does not disclose sufficient information required by this chapter, or the regulations made pursuant thereto, to be stated in such application, then the applicant shall file in writing, within 48 hours, exclusive of Sundays and legal holidays, after a demand therefor made by the Commissioners, such additional information as may be required by said Commissioners: *Provided further*, That the Commissioners, for good cause shown by the applicant, may extend the time for filing such additional information: *Provided further*, That the Commissioners may withhold the issuance of a certificate of registration until such additional information is furnished. Each certificate of registration shall be valid for such period of time as shall be specified therein. (July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 5.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2105. Solicitor information cards—Conditions under which solicitation may be made.

(a) No individual shall solicit in the District of Columbia unless he exhibits a solicitor information card or a copy thereof, produced and authenticated as provided in regulations made pursuant to this chapter, and reads it to the person solicited, or presents it to said person for his perusal, allowing him sufficient opportunity to read such card before accepting any contribution so solicited.

(b) No individual shall solicit in the District of Columbia by printed matter or published article, or over the radio, television, telephone, or telegraph, unless such publicity shall contain the data and information required to be set forth on the solicitor

information card: *Provided*, That when any solicitation is made by telephone, the solicitor shall present to each person who consents or indicates a willingness to contribute, prior to accepting a contribution from said person, such solicitor information card or a copy thereof produced and authenticated as provided in regulations made pursuant to this chapter (July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 6.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2106. Registrant required to make report of contributions—Time.

Each registrant shall, within thirty days after the period for which a certificate of registration has been issued, and within thirty days after a demand therefor by the Commissioners, file a report with the Commissioners, stating the contributions secured as a result of any solicitation authorized by such certificate and in detail all expenses of or connected with such solicitation, and showing exactly for what use and in what manner all such contributions were or are intended to be dispensed or distributed. (July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 7.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2107. Representations as to truth or finding by Commissioners in regard to registration certificate or solicitor card prohibited.

No person shall make or cause to be made any representation that the issuance of a certificate of registration or of a solicitor information card is a finding by the Commissioners (1) that the statements contained in the registrant's application are true and accurate, (2) that the application does not omit a material fact, or (3) that the Commissioners have in any way passed upon the merits or given approval to such solicitation. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 8.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2108. Telephone solicitation for compensation prohibited.

No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation, or institution. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 9.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2109. Commissioners may appoint advisory committee—Composition of committee—Secretary.

The Commissioners may appoint an advisory committee to advise the Commissioners in respect to any matter related to the enforcement of this chapter, and the members thereof shall serve without compensation. Such committee shall consist of not less than five nor more than nine members, whose terms shall be fixed by the Commissioners. The Commissioners are authorized to assign an employee of the District of Columbia to serve as secretary for the

committee. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 10.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2110. Promulgation of regulations—Hearing.

The Commissioners are authorized to promulgate regulations to carry out the purposes of this chapter: *Provided*, That no such regulation shall be put in effect until after a public hearing has been held thereon. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 11.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2111. Use of other person's name by registered solicitor—Listing of other person's name in advertisement or other publication—Publication of list of contributors by charitable organizations.

(a) No person who is required to obtain a certificate of registration under this chapter shall, for the purpose of soliciting contributions, use the name of any other person, except that of an officer, director, or trustee of the organization for which contributions are solicited, without the written consent of such other person.

(b) A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(c) Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 12.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2112. Penalties—Prosecutions in name of District of Columbia—Action to enjoin violations of this chapter or regulations.

(a) Any person violating any provision of this chapter, or regulation made pursuant thereto, or filing, or causing to be filed, an application or report pursuant to this chapter, or regulation made pursuant thereto, containing any false or fraudulent statement, shall be punished by a fine of not more than \$500, or by imprisonment of not more than sixty days, or by both such fine and imprisonment.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants.

(c) The Corporation Counsel of the District of Columbia or any of his assistants is hereby empowered to maintain an action or actions in the United States District Court for the District of Co-

lumbia in the name of the District of Columbia to enjoin any person from soliciting in violation of this chapter or in violation of any regulation made pursuant to this chapter. (July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 13.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2113. Separability.

If any provision of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of the chapter, and the ap-

plication of such provision to other persons or circumstances, shall not be affected thereby. (July 10, 1957, 71 Stat. 282, Pub. L. 85-87, § 15.)

EFFECTIVE DATE

See note under section 2-2101.

§ 2-2114. Appropriations.

Such appropriations as may be necessary to carry out the purposes of this chapter are authorized. (July 10, 1957, 71 Stat. 282, Pub. L. 85-87, § 16.)

EFFECTIVE DATE

See note under section 2-2101.

TITLE 3.—BOARD OF PUBLIC WELFARE

Chapter 1.—BOARD OF PUBLIC WELFARE

§ 3-102 [8:2]. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.

TRANSFER OF FUNCTIONS

Reorganization Order No. 58 as amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a director with the purpose of planning, implementing and directing public welfare programs. The order provided that the previously existing Board of Public Welfare would be abolished. Part V of the order transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. The order was issued in accordance with Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 3-103 [8:3]. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

TRANSFER OF FUNCTIONS

See note under section 3-102.

§ 3-105 [8:5]. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

TRANSFER OF FUNCTIONS

See note under section 3-102.

§ 3-106 [8:6]. Institutions placed under control of board.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new department. It further provided that within the department the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 3-116 [8:16]. Children over whom board shall have supervision.

Said Board of Public Welfare shall have the care and supervision of the following classes of children: First. All children committed under section 32-209. Second. All children who are destitute of suitable homes and adequate means of earning an honest living, all children abandoned by their parents or

guardians, all children of habitually drunken or vicious or unfit parents, all children habitually begging on the streets or from door to door, all children kept in vicious or immoral associations, all children known by their language or life to be vicious or incorrigible whenever such children may be committed to the care of the board by the Juvenile Court of the District: *Provided*, That the laws regulating the commitment of children to the training schools of the District shall not be deemed to be repealed in any part by this section. Third. Such children as the board of trustees of the National Training School for Boys may, in their discretion, commit to the Board of Public Welfare, and power is hereby given the board of trustees of the said school to commit any inmate thereof to the said Board of Public Welfare, conditionally upon the good behavior of the child so committed. Fourth. Under the rules to be established by the board children may be received and temporarily cared for pending investigation or judgment of the court. (July 26, 1892, 27 Stat. 269, ch. 250, § 4; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; May 27, 1908, 35 Stat. 380, ch. 200; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENTS

The words "police or criminal court" appearing in the 1892 act have been changed to "juvenile court" by the 1906 act, cited to the text, conferring original and exclusive jurisdiction of all cases involving legal punishment of children under the said 1892 act upon the juvenile court.

The 1908 act, cited to the text, changed the name of the reform school to the National Training School for Boys.

The 1926 act transferred the powers and duties of the Board of Children's Guardians to the Board of Public Welfare.

CROSS REFERENCES

Commitment of juveniles by juvenile court, § 11-915.

Commitment of minors employed in violation of law, § 36-222.

Duty to designate hospital for treatment to prevent blindness of new-born infants, § 6-202.

COMPILER'S NOTE

This section is set out in this supplement for the purpose of eliminating from clause "Third" thereof the phrase "Subject to the provisions of section 11-915". This phrase was inserted by the compilers for the reasons appearing in the compiler's note under this section in the 1951 edition of the code. The juvenile court act referred to therein was superseded by the juvenile court act of 1938, 52 Stat. 597, ch. 309 and for this reason it is felt that this phrase should no longer appear in this section.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chapter 1.—METROPOLITAN POLICE

Sec.

- 4-132a. Residence requirements of members of Police Force and Fire Department.
- 4-134a. Central criminal records.
- 4-134b. Reports by independent police.
- 4-134c. Notice of release of prisoners.
- 4-137. Police returns and reports to be preserved—Destruction.
- 4-156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees.
- 4-156a. Storage fees for impounded vehicles.
- 4-183a. Retirement of Director—Conditions—Annuities—Appropriations
- 4-183b. Retirement of Director to be pursuant to sections 183a and 183b—Transfer of moneys from Civil Service Retirement and Disability Fund
- 4-186. Bonding Metropolitan Police.
- 4-187. Mobile laboratory.

§ 4-101 [20: 451]. Metropolitan Police district created.

TRANSFER OF FUNCTIONS

Reorganization Order No. 46 of the Board of Commissioners dated June 26, 1953 established under the direction and control of the President of the Board of Commissioners, a Metropolitan Police Department headed by a Chief of Police whose authority is to be exercised in accordance with applicable laws, rules, and regulations. The order sets forth the purpose, organization, and functions of the Metropolitan Police Department. The previously existing Metropolitan Police Department was abolished, and its functions transferred together with all positions, personnel, property, records, and unexpended funds relating to those functions to the new Metropolitan Police Department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. This order and plan are set out in the appendix to Title 1.

§ 4-103 [20: 453]. Appointments—Civil service rules made applicable—Classification.

TRANSFER OF FUNCTIONS

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police; the Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated and effective September 16, 1952 issued pursuant to Reorganization Plan No. 5 of 1952, 66 Stat. 824. The plan and reorganization orders are set forth in the appendix to Title 1.

§ 4-106 [20: 455]. Classification of officers and privates of police department—Duties of each.

* * * The Metropolitan Police force shall consist of not less than two thousand five hundred officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to section 4-133, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to

section 4-514. (As added May 9, 1956, 70 Stat. 148, ch. 243, § 1.)

AMENDMENT

1956—The act of May 9, 1956, cited to text, amended the section by adding the last sentence thereto which increased the size of the Metropolitan Police Force.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

See the note under section 4-124 concerning the Board of Police and Fire Surgeons.

§ 4-106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 4-108 [20: 457a]. Repealed, June 20, 1953, 67 Stat. 76, ch. 146, §§ 404 (a) (1), 404 (a) (2), 404 (a) (7), 404 (a) (8), effective July 1, 1953.

Section related to salaries of officers and members of the Police Force of the District of Columbia and was based on acts July 1, 1930, 46 Stat. 839, ch. 783 § 1; June 30, 1949, 63 Stat. 376, ch. 287, § 2. Corresponding provisions are now set out in sections 4-813 and 4-814.

§ 4-109 [20: 458]. Repealed. June 29, 1953, 67 Stat. 101, ch. 159, § 305, effective July 1, 1953.

Section provided that certain police officers entrusted with the keeping of money and valuables would be required to give security, and was based upon act of February 28, 1901, 31 Stat. 820, ch. 623, § 2. Section 4-186 now provides for bonding members of the Metropolitan Police force.

§ 4-113 [20: 463]. Crossing policemen made members of Metropolitan police force.

AMENDMENT

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-114 [20: 465]. Substitution of other members of force for crossing duty.

AMENDMENT

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

TRANSFER OF FUNCTIONS

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police; the Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the

Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated and effective September 16, 1952 issued pursuant to Reorganization Plan No. 5 of 1952. The plan and reorganization orders are set forth in the appendix to Title 1.

§ 4-119. Duties of Board of Commissioners as head of police department.

NOTES TO DECISIONS

ABUSE OF AUTHORITY

Where Board of Commissioners for the District of Columbia issued a directive requiring all police officers to answer lengthy questionnaire of Senate District Crime Investigating Committee, and there was no clear showing of an abuse of lawful authority or wrongful usurpation of power by Board, action would not be enjoined although Board had no authority to issue such a directive under governing statutes. *Robert J. Barrett v. J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (1955, 134 F. Supp. 106).

POWERS OF BOARD

Board of Commissioners for the District of Columbia is a creature of statute and derives its power from expressed statutory authority which is in the nature of a restraining rather than an enabling act. *Robert J. Barrett v. J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (1955, 134 F. Supp. 106).

§ 4-121 [20: 472]. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.

TRANSFER OF FUNCTIONS

See note under section 4-122 concerning trial boards.

NOTES TO DECISIONS

LIBEL AND SLANDER

One who writes communications to police captain and chief of police relating to alleged misconduct of police officer, acting out of what he believes to be his social duty, is entitled to qualified privilege against liability for libel and slander with respect to such communications. *Sowder v. William E. Nolan* (D. C. Mun. App. 125 A. 2d 52).

§ 4-122 [20: 473]. Trial board—Appointment—Hearings—Findings—Appeals—Existing rules and regulations ratified.

TRANSFER OF FUNCTIONS

Reorganization Plan No. 48 of the Board of Commissioners dated June 26, 1953, established in the Government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board to operate in accordance with applicable laws, rules, and regulations. The order sets forth the purpose, manner of selection of members, and the functions of the boards, and abolished the previously existing Police Trial and Review Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

ADVISORY OPINIONS

The Board of Commissioners of the District of Columbia may not delegate its power to take disciplinary action for dereliction of duty against members of Metropolitan Police Department but there is nothing to prevent Board from seeking outside advisory opinions from members of local bar association or any other group, and such group would not be part of Board and its designated representatives since they would not be bona fide employees of municipal government, and therefore commissioners did not oust themselves of their statutory powers by appointment of three member outside com-

mittee to render advisory opinion relating to activities of certain police officers. *In re Bullock* (1952, 103 F. Supp. 639).

LIBEL AND SLANDER

One who writes communications to police captain and chief of police relating to alleged misconduct of police officer, acting out of what he believes to be his social duty, is entitled to qualified privilege against liability for libel and slander with respect to such communications. *Sowder v. William E. Nolan* (D.C. Mun. App. 1956, 125 A. 2d 52).

§ 4-124 [20: 475]. Police surgeons — Qualifications — Duties.

TRANSFER OF FUNCTIONS

Reorganization Order No. 47 of the Board of Commissioners dated June 26, 1953 reconstituted the then existing Board of Police and Fire Surgeons including the Office of the Chairman, with the same name and with the same functions previously performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto. The order provided that the reconstituted Board should be organizationally a part of the Fire Department. All positions, personnel, property, records and unexpended funds relating to the functions of the previous Board were transferred to the reconstituted Board. The order provided that the previously existing Board would be abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 4-126 [20: 477]. Police to respect and obey major and superintendent.

TRANSFER OF FUNCTIONS

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police; the Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated and effective September 16, 1952 issued pursuant to Reorganization Plan No. 5 of 1952. The plan and reorganization orders are set forth in the appendix to Title 1.

§ 4-127 [20: 478]. Major and superintendent to make quarterly reports.

TRANSFER OF FUNCTIONS

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police; the Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated and effective September 16, 1952 issued pursuant to Reorganization Plan No. 5 of 1952. The plan and reorganization orders are set forth in the appendix to Title 1.

§ 4-129 [20: 480]. Rewards, presents, fee, or emolument to police officers—Notice to commissioners—Penalty for failure to give notice.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-132. Repealed. July 25, 1956, 70 Stat. 647, ch. 726, § 3.**COMPILER'S NOTE**

Section 3 of the act of July 25, 1956, repealed this section and substituted in its place the matter classified to section 4-132a.

§ 4-132a. Residence requirements of members of Police Force and Fire Department.

(a) There shall be no limitation or restriction of place of residence of any officer or member of the Metropolitan Police force, or of the Fire Department of the District of Columbia other than residence within the Washington, District of Columbia, metropolitan district. For the purposes of sections 4-132a and 4-409a, "Washington, District of Columbia, metropolitan district" shall, except as otherwise provided in subsection (b) of this section, be held to include the District of Columbia and the territory adjacent thereto within a radius of twelve miles from the United States Capitol Building. Any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia living outside of the District of Columbia shall have and maintain a telephone at all times in his residence.

(b) For the purposes of sections 4-132a and 4-409a, the Commissioners of the District of Columbia are hereby authorized, in their discretion, to prescribe the area constituting the "Washington, District of Columbia, metropolitan district" so as to include the District of Columbia and the territory within any radius which is greater than twelve miles but not more than twenty miles from the United States Capitol Building. (July 25, 1956, 70 Stat. 646, ch. 726, § 1.)

§ 4-134 [20:485]. Records—General complaint files—Registry of lost, missing, or stolen property—Personnel records of police.

The Board of Commissioners shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(a) Case number, date of arrest, and time of recording arrest in arrest book;

(b) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(c) Offense with which person arrested was charged and place where person was arrested;

(d) Name and address of complainant;

(e) Name of arresting officer; and

(f) Disposition of case; and

(5) Such other records as the Board of Commissioners considers necessary for the efficient operation of the Metropolitan Police force. (R. S., D. C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, § 301; Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1.)

AMENDMENTS

1954—The act of August 20, 1954, added a new paragraph (4) and renumbered former paragraph (4) as paragraph (5).

1953—Act of June 29, 1953, amended the section to eliminate references to record books in order to authorize more efficient record forms, and also amended the section to provide for the keeping of additional records necessary for the efficient operation of the police force.

§ 4-134a. Central criminal records.

(a) In addition to the records kept under section 4-134, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Commissioners determine this section should not apply). The record shall show—

(1) the circumstances under which the individual came into the custody of the police or the United States marshal;

(2) the charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) if he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) if his guilt or innocence is so determined, the judgment of the court;

(5) if he is convicted, the sentence imposed; and

(6) if, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Commissioner for the District, the clerk of the district court, the clerk of the municipal court, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Commissioners consider necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, § 302.)

COMMISSIONERS' ORDER

Commissioners' Order No. 56-1639, dated August 16, 1956, provides that section 4-134a (a) shall not apply to certain traffic violations listed in said order.

§ 4-134b. Reports by independent police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Commissioners, of each offense reported to, and each arrest made by, any other police force operating in

the District. (June 29, 1953, 67 Stat. 100, ch. 159, § 303.)

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

§ 4-134c. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under section 24-204, or the United States Board of Parole has authorized the release of a prisoner under section 24-206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of six months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, § 304.)

§ 4-135 [20: 486]. Records open to public inspection.

The records to be kept by paragraphs (1), (2), (3), and (4) of section 4-134 shall be open to public inspection when not in actual use and this requirement shall be enforceable by mandatory injunction issued by the United States District Court for the District of Columbia on the application of any person. (R. S., D. C., § 389, June 29, 1953, 67 Stat. 99, ch. 159, § 301; Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2.)

AMENDMENTS

1954—The act of August 20, 1954, amended the section by adding a reference to paragraph (4) of section 4-134.

1953—Act of June 29, 1953, amended the section by revising the language to conform to section 4-134, and designates which records shall be open to public inspection.

§ 4-137 [20: 488]. Police returns and reports to be preserved—Destruction.

All records of the Metropolitan Police force shall be preserved, except that the Board of Commissioners, upon recommendation of the major and superintendent of police, may cause records which it considers to be obsolete or of no further value to be destroyed. (R. S., D. C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, § 301.)

AMENDMENTS

1953—Act of June 29, 1953, amended the section by providing that the Board of Commissioners on recommendation of the Major and Superintendent of Police can destroy records it considers to be obsolete or of no further value. The language was revised to provide that all records of the police "shall be preserved". Previously the section provided that all police returns and reports would be "kept and bound".

§ 4-140 [20: 491]. Arrests without warrant.

NOTES TO DECISIONS

ADMISSIBILITY IN EVIDENCE OF SEIZED PROPERTY

Where officers, who had been informed by arrested addict that certain person had sold him narcotics procured at apartment at certain address, arranged for purchase of narcotics from that person, whom they followed to apartment building and arrested in taxicab with narcotics and marked bills, and subsequently occupants of apartment opened door on being informed of presence of officers but left in place chain lock which officers broke, and officers entered and arrested occupants, arrest was lawful, under such exceptional circumstances, and marked money seized in search of apartment was admissible in evidence in narcotics prosecution of occupants. *Shepherd v. United States*, *Miller v. United States*, *Byrd v. United States* (1957, 100 U. S. App. D. C. 302, 244 F. 2d 750).

ADMISSIBILITY OF CONFESSIONS

Confessions made while a defendant is under arrest are admissible in evidence if voluntarily made and if the rule requiring defendant to be promptly taken before a committing magistrate is not violated, whether the arrest was legal or illegal. *E. Smith v. United States* (1958, 103 U. S. App. D. C. 48, 254 F. 2d 751).

In prosecution for narcotics violation, inculpatory statement made immediately on the arrest and without there having been any illegal detention was admissible, and this was so whether the arrest was legal or illegal. *Id.*

APPLICABILITY OF FEDERAL RULES IN MUNICIPAL COURT

Federal Rules of Criminal Procedure do not apply to proceedings in District of Columbia Municipal Court in which the judges try misdemeanors, although they do govern proceedings in which the judges act as committing magistrates. *K. B. Larkin v. United States* (D. C. Mun. App. 1958, 144 A. 2d 100).

ARREST WITHOUT WARRANT

Where defendant, who was known to police as a narcotics addict, was seen to surreptitiously take a small brown envelope from a person who was known by police to be a narcotic peddler, arrest of defendant immediately upon street without a warrant and search of his person was lawful. *United States v. I. Simms* (1959, 171 F. Supp. 834).

CIRCUMSTANCES WARRANTING ARREST

Probable cause for arrest depends upon reasonable ground for belief of guilt. *Shepherd v. United States*, *Miller v. United States*, *Byrd v. United States* (1957, 100 U. S. App. D. C. 302, 244 F. 2d 750).

Officer, who found billfold containing numbers slips, possession of which constituted crime, had right to determine owner and to arrest him, and, therefore, when party admitted ownership of billfold, no warrant for his arrest was necessary. *Roseborough v. United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

CONFESSIONS DURING ILLEGAL DETENTION

The rule excluding from evidence a confession elicited during a period of illegal detention or delay between arrest and arraignment is applicable to proceedings in the District of Columbia Municipal Court. *K. B. Larkin v. United States* (D. C. Mun. App. 1958, 144 A. 2d 100).

The period of time from formal arrest of defendant at 11:00 a. m., after he had made oral confession, to the conclusion of dictation of written confession at 12:40 p. m. the same day, which was simply used to reduce oral statements to written form, was legitimate delay and permissible. *Id.*

DELAY IN ARRAIGNMENT

Any delay in arraignment after confession is immaterial and could have no retroactive effect on validity of confession. *K. B. Larkin v. United States* (D. C. Mun. App. 1958, 144 A. 2d 100).

Delay from 10:00 a. m., when defendant arrived at police headquarters at officer's request, to 11:00 a. m.

when oral admissions were made, was not so unreasonable as to render inadmissible written confessions based on the oral admissions, where no interrogation took place during such period but defendant and officers were waiting arrival of complaining witness so that identification could be made and the oral admissions were made promptly and spontaneously upon being confronted with complainant's version of incident especially in view of police officer's testimony that defendant was free to come and go. *Id.*

PROBABLE CAUSE FOR ARREST

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 101 U. S. App. D. C. 198, 247 F. 2d 784).

§ 4-141 [20: 492]. Powers of officers in connection with suspected felonies.

NOTES TO DECISIONS

ADMISSIBILITY IN EVIDENCE OF SEIZED PROPERTY

Where officers, who had been informed by arrested addict that certain person had sold him narcotics procured at apartment at certain address, arranged for purchase of narcotics from that person, whom they followed to apartment building and arrested in taxicab with narcotics and marked bills, and subsequently occupants of apartment opened door on being informed of presence of officers but left in place chain lock which officers broke, and officers entered and arrested occupants, arrest was lawful, under such exceptional circumstances, and marked money seized in search of apartment was admissible in evidence in narcotics prosecution of occupants. *Shepherd v. United States, Miller v. United States, Byrd v. United States* (1957, 100 U. S. App. D. C. 302, 244 F. 2d 750).

ARREST WITHOUT WARRANT

Where defendant, who was known to police as a narcotics addict, was seen to surreptitiously take a small brown envelope from a person who was known by police to be a narcotic peddler, arrest of defendant immediately upon street without a warrant and search of his person was lawful. *United States v. I. Simms* (1959, 171 F. Supp. 834).

CIRCUMSTANCES WARRANTING ARREST

Probable cause for arrest depends upon reasonable ground for belief of guilt. *Shepherd v. United States, Miller v. United States, Byrd v. United States* (1957, 100 U. S. App. D. C. 302, 244 F. 2d 750).

§ 4-151 [20: 502]. Property clerk—Office created.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-152 [20: 503]. Custody of stolen, lost, or abandoned property.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to

defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

PRESUMPTION OF LOSS OR ABANDONMENT

Billfold found by officer was presumably lost or abandoned property. *Roseborough v. United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

§ 4-153 [20: 504]. Record of stolen, lost, or abandoned property to be kept.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-154 [20: 505]. Property clerk vested with power of notary public.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-155 [20: 506]. Property clerk may administer oaths.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-156 [20: 507]. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees.

(a) Upon satisfactory evidence of the ownership of property or money described in section 4-155 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(b) In the event two or more persons claim ownership of any such property or money, the property clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person

to whom the property or money shall be delivered. At the time and place so designated the property clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the property clerk shall deliver the property or money to the person whom the property clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(c) The property clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in sections 4-163, 4-164, and 4-165 hereof, no property or money in the possession of the property clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held under the provisions of section 4-158 hereof; nor shall it be delivered within one year after the date of receipt of said property or money by the property clerk unless the United States attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime. Before delivering any property coming into his custody as a result of the death of the owner or the execution by the United States marshal of a judgment to recover possession of real property, or any property which is lost, abandoned, or alleged to have been feloniously obtained or to be the proceeds of crime, the property clerk shall collect from the person claiming the property a fee, to be fixed under the regulations prescribed by the Board of Commissioners, to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of, protecting, and storing the property. (R. S., D. C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1; June 29, 1953, 67 Stat. 101, ch. 159, § 306.)

AMENDMENTS

1953—Act of June 29, 1953, added the last sentence authorizing the collection of storage fees.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

RETENTION OF SEIZED MONEY SUBJECT TO TAX LIEN

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposi-

tion thereof. *Welsh v. United States of America* (1955, 95 U. S. App. D. C. 93, 220 F. 2d 200).

SUMMARY JUDGMENT

In action by leasehold tenant of apartment to recover damages from her landlord, his agent, and District of Columbia for negligence in execution of writ of restitution from Municipal Court for the District of Columbia, from allegations of complaint and facts before court which were given in support of defendants' motions for summary judgment, tenant was entitled to trial to show whether property was negligently damaged by defendants or any of them and if so to recover from any defendant who might be liable in law for its negligence or that of its servants for whom it is responsible. *H. O'Neil Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F. 2d 714).

§ 4-156a. Storage fees for impounded vehicles.

(a) Any vehicle impounded by any officer or member of the Metropolitan Police force may be kept impounded until the person claiming the vehicle pays a fee, to be fixed under regulations prescribed by the Commissioners, to reimburse the District for the cost of storing the vehicle, for each day in excess of seven days during which it is impounded.

(b) Fees collected by reason of this section and section 4-156 shall be paid into the Treasury of the United States to the credit of the District of Columbia. (June 29, 1953, 67 Stat. 101, ch. 159, § 306.)

CROSS REFERENCE

For definition of "District" and "Commissioners" see note under § 4-134.

§ 4-157 [20:508]. Return of property to accused upon acquittal.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-158 [20:509]. Claims of third persons.

NOTES TO DECISIONS

DEPOSIT OF UNLAWFULLY SEIZED PROPERTY

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States v. Scott* (1957, 149 F. Supp. 837).

§ 4-159 [20:510]. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased persons—Balance to relief funds for policemen and firemen.

AMENDMENT

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

NOTES TO DECISIONS

SUMMARY JUDGMENT

In action by leasehold tenant of apartment to recover damages from her landlord, his agent, and District of Columbia for negligence in execution of writ of restitution from Municipal Court for the District of Columbia, from allegations of complaint and facts before court which were given in support of defendants' motions for summary judgment, tenant was entitled to trial to show whether property was negligently damaged by defendants or any of them and if so to recover from any defendant who might be liable in law for its negligence or that of its servants for whom it is responsible. *H. O'Neil Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F.2d 714).

§ 4-160 [20: 511]. Sale at auction—Balance to policemen's fund.

AMENDMENT

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-179 [20: 530]. Leave of absence.

CROSS REFERENCE

Policemen exempted from general law concerning annual and sick leave for District employees, § 1-312.

§ 4-180 [20: 531]. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (1).

Section related to time off for Metropolitan Police of the District of Columbia and was based upon act of May 27, 1924, 43 Stat. 175, ch. 199, § 3. Corresponding provisions are now set forth in section 4-904.

§ 4-182. Police Department band—Director.

There is hereby authorized to be established in the Metropolitan Police Department a band to perform at such municipal or civic functions and events as may be authorized by the Commissioners of the District of Columbia. The Major and Superintendent of Police is authorized in his discretion to detail, without additional compensation, such officers and members of the Metropolitan Police force as may request such a detail to participate in the activities of such band. The said Commissioners are authorized to employ, without reference to the civil-service laws, one director for such band with compensation at a rate not to exceed the rate of compensation to which a captain in the Metropolitan Police force is entitled. (July 11, 1947, 61 Stat. 311, ch. 226, § 1; Aug. 14, 1957, 71 Stat. 345, Pub. L. 85-129, § 1.)

AMENDMENTS

1957—Act of August 14, 1957, cited to text, amended section by striking out the word "lieutenant" in the last sentence and substituting in its place the word "captain."

§ 4-183a. Retirement of Directors—Conditions—Annuities—Appropriations.

Notwithstanding the limitations of existing law, the person who is the director of the Metropolitan Police force band on the effective date of this section may elect to retire after having served ten or more years in such capacity and having attained the age of seventy years. Upon such retirement, whether for age and service or for disability, said director and his surviving spouse shall be entitled to receive annuities in amounts equivalent to, and under the con-

ditions applicable to, the annuities which a captain in the Metropolitan Police force and his surviving spouse may be entitled to receive after such captain has retired from said force for substantially the same reason as that for which said director may retire, whether for age and service or for disability, as the case may be. If the said director shall apply for retirement for disability, he shall not be eligible to retire under section 4-527, but he shall be eligible to apply for retirement under section 4-526, in like manner as if the said director were an officer or member of the Metropolitan Police force. The annuities hereby authorized shall be in addition to any pension or retirement compensation which said director may be entitled to receive from any other source, whether from the United States or otherwise. The annuities payable to said director and his surviving spouse pursuant to sections 4-182 to 4-184 shall be payable from District of Columbia appropriations, but shall not be considered as annuities payable to an officer or member of the Metropolitan Police force or to the surviving spouse of such officer or member. Appropriations for the operations of the Metropolitan Police Department are made available for this purpose. Annuities authorized by this section shall be computed on the basis of compensated service rendered after July 11, 1947. (Sept. 22, 1959, 73 Stat. 640, Pub. L. 356, § 1(3).)

AMENDMENTS

1959—Section 1(3) of the act of September 22, 1959, amended the act of July 11, 1947, by adding section 3 thereto, as above set out.

§ 4-183b. Retirement of director to be pursuant to provisions of sections 183a and 183b—Transfer of moneys from Civil Service Retirement and Disability Fund.

The person who is the Director of the Metropolitan Police force band on September 22, 1959 shall, upon his retirement from such position, be retired under the provisions of sections 182 to 184 and not under Chapter 30 of Title 5 of the U.S. Code, and the moneys to his credit in the Civil Service Retirement and Disability Fund created under the authority of Chapter 30 of Title 5 of the U.S. Code, on the date of such retirement, together with such moneys in such fund as may have been contributed by the District of Columbia toward the cost of his annuity under Chapter 30 of Title 5 of the U.S. Code, shall be transferred to the credit of the general revenues of the District of Columbia. (Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356, § 1(4).)

AMENDMENTS

1959—Section 1(4) of the act of September 22, 1959, amended the act of July 11, 1947, by adding section 4 thereto, as above set out.

§ 4-184. Appropriations for band authorized.

Appropriations to carry out the purpose of sections 4-182 to 4-184 is hereby authorized. (July 11, 1947, 61 Stat. 311, ch. 226, § 4; Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356, § 1(5).)

AMENDMENT

1959—Section 1(5) of the act of September 22, 1959, amended this section by renumbering it from section 3 to section 4.

§ 4-185. Advances to the superintendent of police.

The disbursing officer of the District of Columbia is authorized to advance to the chief of police, upon requisitions previously approved by the auditor of the District of Columbia, sums of money to be used in the prevention and detection of crime, the total of such advancements not to exceed \$5,000 at any one time. (Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; July 1, 1954, 68 Stat. 394, ch. 449, § 10.)

COMPILER'S NOTE

Sec. 11 of the act of Aug. 3, 1951, is substantially the same as a provision which appeared in prior annual appropriation acts. The succeeding acts of July 5, 1952, 66 Stat. 391, ch. 576, § 11, July 31, 1953, 67 Stat. 295, ch. 299, § 11, and July 1, 1954, 68 Stat. 394, ch. 449, § 10. The act of July 1, 1954, substituted "chief of police" for superintendent of police.

REPEATED

Act of July 5, 1955, 69 Stat. 262, ch. 272, § 9.
See section 10-103a.

§ 4-186. Bonding of Metropolitan Police.

The Commissioners shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Commissioners shall consider appropriate. The Commissioners may obtain such bonds by negotiation, without regard to section 3709 of the Revised Statutes, as amended (41 U. S. C., sec. 5), and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any such bond may cover periods not exceeding three years and may be paid in advance. (June 29, 1953, 67 Stat. 101, ch. 159, § 305; July 7, 1955, 69 Stat. 281, ch. 280, § 4.)

AMENDMENTS

1955—Act of July 7, 1955, amended the section by adding the last sentence.

CROSS REFERENCE

For definitions of "District" and "Commissioners", see note under § 4-1346.

EFFECTIVE DATE

Section 305c of the act of June 29, 1953, provided that the provisions of section 305 of that act would take effect July 1, 1953. Section 305 (a) is found in the D. C. Code as section 4-186, and section 305 (b) repealed section 4-109.

§ 4-187. Mobile laboratory.

The Metropolitan Police force shall maintain and operate a motor vehicle equipped with cameras, photographic developing equipment, an electrical generator, floodlights, and such other equipment as may be necessary to permit the use of the vehicle as a mobile laboratory to handle evidence at the scenes of crimes and otherwise to aid in the prevention and detection of crime. (June 29, 1953, 67 Stat. 101, ch. 159, § 307.)

Chapter 2.—UNITED STATES PARK POLICE

§ 4-203 [20:535]. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (1).

Section related to salaries and time off from duty of United States Park Police and was based upon Act of May 27, 1924, 43 Stat. 175, ch. 199, § 5, as amended. Corresponding provisions are now set forth in sections 4-820 and 4-904.

Chapter 3.—WHITE HOUSE POLICE

§ 4-301 to 4-306. Repealed. June 25, 1948, 62 Stat. 681, ch. 644, § 3.

CROSS REFERENCE

For provisions relating to the White House Police force see title 3 U. S. C. sections 202—208.

Chapter 4.—FIRE DEPARTMENT

Sec.

4-409a. Restrictions on members of Fire Department leaving District—Residence—Sick leave.

§ 4-401 [20:551]. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.

TRANSFER OF FUNCTIONS

See note under section 4-402 concerning the reorganization of the Fire Department.

§ 4-402 [20:552]. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

TRANSFER OF FUNCTIONS

The office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to and vested in the Fire Chief, the Deputy Chief Engineer of the Fire Department was designated "Deputy Fire Chief", and the Battalion Chief Engineer was designated "Battalion Fire Chief" by Reorganization Order No. 6 dated and effective September 16, 1952, issued pursuant to Reorganization Plan No. 5 of 1952. The plan and order are set out in the appendix to Title 1.

Reorganization Order No. 38 of the Board of Commissioners dated June 18, 1953, established under the direction and control of the President of the Board of Commissioners, a Fire Department headed by the Fire Chief. The Fire Chief was given full authority over the Department to be exercised in accordance with applicable laws, rules and regulations. The order set up the organization of the Department, and provided that the previously existing Fire Department was abolished and its functions transferred to the new Department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 4-404 [20:554]. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

TRANSFER OF FUNCTIONS

The office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to the Fire Chief, the Deputy Chief Engineer was designated "Deputy Fire Chief" and the Battalion Chief Engineer designated "Battalion Fire Chief" by Reorganization Order No. 6 dated September 16, 1952, effective that date, issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the appendix to Title 1.

Reorganization Order No. 47 of the Board of Commissioners dated June 26, 1953, reconstituted the then existing Board of Police and Fire Surgeons including the Office of the Chairman, with the same name and with the same functions previously performed, including the

powers, duties, and authorities of all members, officers, and employees assigned thereto. The order provided that the reconstituted Board should be organizationally a part of the Fire Department. All positions, personnel, property, records and unexpended funds relating to the functions of the previous Board were transferred to the reconstituted Board. The order provided that the previously existing Board would be abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 4-404a. Workweek established—Hours—Days off—Exceptions.

(a) The commissioners of the District of Columbia are authorized and directed to (1) establish a workweek of not more than seventy hours for officers and members of the Fire Department of the District of Columbia on night-platoon duty and of not more than fifty hours for such officers and members on day-platoon duty, and (2) require that the hours of work in each such workweek be performed within a period of five of any seven consecutive days. The two days off duty in each seven-day period to which each officer and member of the Fire Department is entitled under this subsection shall be in addition to his annual leave and sick leave allowed by law.

(b) Notwithstanding the provisions of subsection (a), whenever the commissioners declare that an emergency exists of such a character as to necessitate the continuous service of all officers and members of the Fire Department, it shall be the duty of the chief engineer of the Fire Department to suspend and discontinue the granting of such two days off in seven during the continuation of such emergency. Whenever the granting of days off has been suspended and discontinued pursuant to this subsection, each officer and member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty which he performs by reason of the suspension and discontinuance of his days off under this subsection. Any officer or member so performing duty shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in section 5 of the Act entitled "An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia", approved July 1, 1930, as amended. (June 19, 1948, 62 Stat. 499, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2.)

AMENDMENTS

1955—The act of August 4, 1955, cited to text, amended subsection (b) by adding the matter following the first sentence of said subsection.

CROSS REFERENCE

Firemen exempted from general law concerning sick leave for District employees, and are included as to annual leave, § 1-312.

Provisions relating to retirement compensation. Sections 4-501—4-520.

REFERENCES IN TEXT

Section 12 of the act of September 1, 1916, as amended, is set out as §§ 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506, 4-507, 4-508, 4-509, 4-510, 4-512, 4-513, 4-514, 4-515, 4-517, 4-518, 4-519, 4-520, and 11-625.

Section 5 of the act of July 1, 1930, as amended, is set out in §§ 4-503, 4-504.

EFFECTIVE DATE

Section 3 of act of June 19, 1948, cited to text, provided: "This Act shall take effect one hundred and eighty days after funds have been appropriated and made available for the additional personnel necessary to carry out the purposes of this Act."

Act of June 16, 1950, 64 Stat. 232, ch. 267, amended sec. 3 of act of June 19, 1948, set out in preceding paragraph, to read as follows: "This Act shall take effect as of the date funds are made available for the additional personnel necessary to carry out the purposes of this Act, or the date funds are appropriated for such personnel, whichever is the later date."

1955—Section 3 of act of August 4, 1955, provided: "This Act shall take effect on July 1, 1955."

§ 4-405 [20: 555a]. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, §§ 404 (a) (1), 404 (a) (2), 404 (a) (3), 404 (a) (4).

Section related to salaries of members of the Fire Department of the District of Columbia and was based upon Act of July 1, 1930, 46 Stat. 840, ch. 783, § 2, as amended. Corresponding provisions are now set out in sections 4-815 and 4-816.

§ 4-408 [20: 558]. Leave of absence.

CROSS REFERENCE

Firemen exempted from general law concerning sick leave for District employees, § 1-312, and are included as to annual leave, § 1-312.

§ 4-409. Repealed. July 25, 1956, 70 Stat. 647, ch. 726, § 3.

COMPILER'S NOTE

Section 3 of the act of July 25, 1956, repealed this section and substituted in its place the matter classified to section 4-409a.

§ 4-409a. Restrictions on members of Fire Department leaving District—Residence—Sick leave.

No member of the Fire Department of the District of Columbia shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission. Nothing in this section shall be construed to limit the right of officers and members of the Fire Department to reside anywhere within the Washington, District of Columbia, metropolitan district. Thirty days shall be the term of total sick leave in any one year without disallowance of pay. Leaves of absence with pay of members of the Fire Department of the District of Columbia may be extended in cases of illness or injury incurred in line of duty, upon recommendation of the board of surgeons approved by the Commissioners, for such period exceeding thirty days in any one year as in the judgment of the Commissioners may be necessary. For the purposes of this subsection "any one year" shall mean a year from January 1 to December 31, both dates inclusive. (July 25, 1956, 70 Stat. 647, ch. 726, § 2.)

COMPILER'S NOTE

Section 1 (b) of the act of July 25, 1956, cited to text, classified to section 4-132a is applicable to this section and reads as follows:

For the purposes of sections 4-132a and 4-409a, the Commissioners of the District of Columbia are hereby authorized, in their discretion, to prescribe the area constituting the "Washington, District of Columbia, metropolitan district" so as to include the District of Columbia and the territory within any radius which is greater than twelve miles but not more than twenty miles from the United States Capitol Building.

CROSS REFERENCE

For subject matter dealing with residential requirements of officers or members of Fire Department see section 4-132a.

§ 4-410 [20:560]. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (1).

Section related to time off for members of the fire department of the District of Columbia and was based upon Act of May 27, 1924, 43 Stat. 175, ch. 199, § 3. Corresponding provisions are now set out in sections 4-404a and 4-821.

§ 4-413. Apparatus—Construction.

COMPILER'S NOTE

Act of June 29, 1956, made this section permanent law by inserting the word "hereafter" at the beginning of the section.

NOTES TO DECISIONS

AMBIGUITY

Statute for District of Columbia providing that each policeman and fireman retired from active service and entitled to pension shall be entitled to receive, with respect to each increase in salary granted by statute, an increase in his pension, but providing that no policeman or fireman shall be entitled to a longevity increase unless he has maintained a rating of satisfactory or better, is ambiguous with respect to whether longevity increases are to be allowed in calculating increases in retirement allowances, and it is therefore appropriate to have recourse to extrinsic aids to construction. The prime extrinsic aid in construction of ambiguous statute for the District of Columbia was the Senate committee report. *Abell et al. v. Spencer et al.* (1954, 125 F. Supp. 643).

REPEATED

- Act June 29, 1956, 70 Stat. 443, ch. 479, § 1.
- Act July 5, 1955, 69 Stat. 249, ch. 272, § 1.
- Act July 1, 1954, 68 Stat. 382, ch. 449, § 1.
- Act July 31, 1953, 67 Stat. 284, ch. 299, § 1.
- Act July 5, 1952, 66 Stat. 379, ch. 596, § 1.
- Act Aug. 3, 1951, 65 Stat. 160, ch. 292, § 1.

§ 4-414. Reciprocal agreements for mutual aid.

NOTES TO DECISIONS

AMBIGUITY

Statute for District of Columbia providing that each policeman and fireman retired from active service and entitled to pension shall be entitled to receive, with respect to each increase in salary granted by statute, an increase in his pension, but providing that no policeman or fireman shall be entitled to a longevity increase unless he has maintained a rating of satisfactory or better, is ambiguous with respect to whether longevity increases are to be allowed in calculating increases in retirement allowances, and it is therefore appropriate to have recourse to extrinsic aids to construction. The prime extrinsic aid in construction of ambiguous statute for the District of Columbia was the Senate committee report. *Abell et al. v. Spencer et al.* (1954, 125 F. Supp. 643).

TRANSFER OF FUNCTIONS

The office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to and vested in the Fire Chief, the Deputy Chief Engineer of the Fire Department was designated "Deputy Fire Chief," and the Battalion Chief Engineer was designated

"Battalion Fire Chief" by Reorganization Order No. 6 dated and effective September 16, 1952 issued pursuant to Reorganization Plan No. 5 of 1952. The plan and order are set out in the appendix to Title 1.

CHAPTER 5.—POLICE AND FIREMEN'S RELIEF FUND

Sec.

- 4-518. Pension relief allowance or retirement compensation increase.
- 4-519. Computation of pension of certain retired officers—Equivalent positions.
- 4-520. Waiver of relief or retirement compensation.

POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

- 4-521. Definitions.
- 4-522. United States secret service division—Transfer of civil service retirement funds.
- 4-523. Creditable service—Military and other government service.
- 4-524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.
- 4-525. Medical and hospital service—Payment of by District on certificate of Commissioners.
- 4-526. Retirement for disability not incurred in performance of duty.
- 4-527. Retirement for disability incurred while performing duty.
- 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.
- 4-529. Involuntary separation from service.
- 4-530. Recovery from disability or restoration to earning capacity—Earning capacity defined—Suspension of annuity—Restoration to duty.
- 4-531. Survivor annuities—Amount—To whom payable—Election of type of annuity.
- 4-532. Funeral expenses.
- 4-533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.
- 4-534. Payment of annuities—Order of payment on death of annuitant—Waiver.
- 4-535. Delegation of functions by Commissioners—Regulations.
- 4-536. No reduction in existing relief.
- 4-537. Appropriation—Reimbursement to District of Columbia.
- 4-538. Eligibility under the Federal Employees' Compensation Act.

§ 4-501 [20:581]. Creation.

AMENDMENT

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-503 [20:582]. Composition—Deficiencies supplied from revenues of District of Columbia—Pensions payable from—Accounting.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

REPEAL

Section 5 (1) of the act of August 21, 1957, 71 Stat. 399, Pub. L. 85-157, repealed so much of the act of June 7, 1924, 43 Stat. 560, entitled, "Police and Firemen's Relief Fund". Section 5 (3) of the act of August 21, 1957, also repealed section 7 of the act of May 27, 1924, 43 Stat. 176, relating to the United States Park Police force.

§ 4-504. Repealed. August 21, 1957. 71 Stat. 399, Pub. L. 85-157, § 5 (2).

This section related to salary deductions, refunds upon separation from service, redeposits on reappointment and payment to the estate of the deceased member.

See new Policemen and Firemen's Retirement and Disability Act, classified to section 4-521 to 4-535.

§ 4-505 [20: 582b]. Commissioners to determine amount of pension relief.

CROSS REFERENCE

Automatic equalization of pensions, § 4-518.

§ 4-506 [20: 583]. Allowance for temporary disability—Medical certificate—Approval.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-507 [20: 584]. Retirement allowance for total disability—Age retirement—Pensions to widows and orphans.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

NOTES TO DECISIONS

CONSTRUCTION

D. C. Code (1951) § 4-507, 39 Stat. 718, is not entirely consistent with § 4-508. Section 4-507 was enacted in 1916 and § 4-508 in 1940. To the extent of the inconsistency, the later statute supersedes the earlier. *Spencer v. Bullock* (1954, 94 U. S. App. D. C. 388, 216 F. 2d 54).

Where Board of Commissioners of District of Columbia retired fireman over age of 64 years and granted him pension under provision of statute providing that firemen may be retired with compensation after having reached age of 60 years, and prior to such time it appeared that fireman had suffered physical disability in line of duty, but there had been no determination by Commissioners of extent of disability as a basis for fixing compensation or retirement pay, it was necessary to treat fireman for income tax purposes as having been retired for age, and retirement compensation received by him was not excludable from his gross income for income tax purposes under provision of the Internal Revenue Code exempting amounts received under workmen's compensation acts, as compensation for personal injuries or sickness in determining income. *Simms v. Commissioner of Internal Revenue* (1952, 90 U. S. App. D. C. 322, 196 F. 2d 238).

RECONSIDERATION OF RETIREMENT

Where pensioners accepted retirement for age and length of service with maximum retirement pay and raised no objection on procedural or any other ground and thereby acquired and have retained for many years retired status with pay, any provisions of statute prescribing certain procedures in granting of retirement orders which were not followed must be deemed to have been waived insofar as the courts are concerned, and courts could not thereafter require Commissioners to set aside original retirement orders and to issue new ones, even though such action might result in income tax benefit to pensioners, if, upon reconsideration, new orders should rest upon ground of disability incurred in line of duty. *Allen et al. v. Spencer et al.* (1954, 93 U. S. App. D. C. 361, 214 F. 2d 205).

WIDOW'S PENSION TAXABLE

Although disability retired pay of policeman would be exempt from income tax because it is legally equivalent of workmen's compensation under provision of Internal Revenue Code, which exempts from income taxation "amounts received through accident or health insurance or under Workmen's Compensation Acts, as compensation for personal injuries and sickness," provision for pension for widows under Policemen and Firemen's Relief Fund did not make pension payments dependent on cause of husband's death and therefore widow's pension benefits constituted taxable income. *Riley v. United States* (1957, 156 F. Supp. 751).

§ 4-508. Voluntary retirement—Age and service requirements—Benefits—Transfer of funds.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

NOTES TO DECISIONS

AUTHORITY OF COMMISSIONERS

Under statute providing that police department member, who has served twenty-five or more years as member and has reached age of fifty-five, may, at his election, be retired from service and shall be entitled to retirement compensation, words "may, at his election, be retired" are equivalent to "may elect to be retired", and to say that policeman could, at his election, be retired was not to say that after he had made his election commissioners could, at their election, refuse to retire him. *Spencer v. Bullock* (1954, 94 U. S. App. D. C. 388, 216 F. 2d 54).

CONSTRUCTION

D. C. Code (1951) § 4-507, 39 Stat. 718, is not entirely consistent with § 4-508. Section 4-507 was enacted in 1916 and § 4-508 in 1940. To the extent of the inconsistency, the later statute supersedes the earlier. *Spencer v. Bullock* (1954, 94 U. S. App. D. C. 388, 216 F. 2d 54).

FUNCTION OF THE BOARD

Statute providing that Police and Firemen's Retiring and Relief Board of District of Columbia shall consider all cases for retirement and relief of members of Police Department, grants authority to Board to determine whether applicant for retirement is within pertinent statutory provisions as to age and service, but does not grant Board discretion to grant or deny applications for reasons not specified in statute. *Bullock v. Spencer* (1953, 112 F. Supp. 147).

RECONSIDERATION OF RETIREMENT

Where pensioners accepted retirement for age and length of service with maximum retirement pay and raised no objection on procedural or any other ground and thereby acquired and have retained for many years retired status with pay, any provisions of statute prescribing certain procedures in granting of retirement orders which were not followed must be deemed to have been waived insofar as the courts are concerned, and courts could not thereafter require Commissioners to set aside original retirement orders and to issue new ones, even though such action might result in income tax benefit to pensioners, if, upon reconsideration, new orders should rest upon ground of disability incurred in line of duty. *Allen et al. v. Spencer et al.* (1954, 93 U. S. App. D. C. 361, 214 F. 2d 205).

RIGHT TO RETIREMENT

Under statute providing that, whenever police department member, who has served twenty-five or more years as member of department and has reached age of fifty-five, he may, at his election, be retired from service and

shall be entitled to retirement compensation, plaintiff, who, at time he made his election, was qualified as to age and length of service requirements, was entitled to retirement even though he was thereafter suspended because of failure to explain source of some of his income. *Spencer v. Bullock* (1954, 94 U. S. App. D. C. 388, 216 F. 2d 54).

VOLUNTARY RETIREMENT

Statute providing that member of District of Columbia Police Department who has served twenty-five years or more and has reached age of 55 years may at his election be retired from service gives policeman choice as to whether to exercise right of retiring for longevity but does not give District of Columbia Government discretion to grant or deny his application. *Bullock v. Spencer* (1953, 112 F Supp. 147).

§ 4-509 [20: 585]. Funeral expenses.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-510 [20: 586]. Retirement and relief board—Appointment — Duties — Hearings — Compulsory attendance of witnesses—Report of findings to commissioners—Approval, disapproval, or modification by commissioners.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952, creating the Department of General Administration and the office of Director, transferred the functions and personnel of the Police and Firemen's Retiring and Relief Board to the Director of General Administration. Reorganization Order No. 31 of the Board of Commissioners dated April 30, 1953, abolished the previously existing Police and Firemen's Retiring and Relief Board and created a new board to be known as the Police and Firemen's Retirement and Relief Board composed of the Personnel Officer, the Director of Public Health, the Corporation Counsel, the Chief of Police, and the Fire Chief. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to title 1.

§ 4-511. Repealed. August 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 5 (3).

Section dealt with status of park police as to relief and retirement.

See new Policemen and Firemen's Retirement and Disability Act, classified to sections 4-521 to 4-535.

§ 4-512 [20: 588]. Medical examinations of pensioners—Commissioners' discretion.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-513 [20: 589]. Reduction or discontinuance of allowance—Causes.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-514 [20: 590]. Service of pensioners in emergency cases.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 4-515. Repealed. August 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 5 (3).

Section dealt with applicability of retirement provisions to park police force and rate of payment.

See new Policemen and Firemen's Retirement and Disability Act, classified to sections 4-521 to 4-535.

§ 4-516. Repealed. August 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 5 (3).

Section dealt with appropriations to defray cost of relief and apportionment between District and United States.

See new Policemen and Firemen's Retirement and Disability Act, classified to sections 4-521 to 4-535.

§ 4-518. Pension relief allowance or retirement compensation increase.

Notwithstanding section 4-505, each individual heretofore or hereafter retired from active service and entitled to receive a pension relief allowance or retirement compensation under the provisions of section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916 (39 Stat. 676), as amended, shall be entitled to receive, without making application therefor, with respect to each increase in salary granted by sections 4-518, 4-519, 4-813, 4-814, 4-815, 4-816, 4-820, 4-821, 4-822, and 4-904, or hereafter granted by law to which such individual would be entitled if he were in active service, an increase in his pension relief allowance or retirement compensation. Such increase shall be in an amount which bears the same ratio to such increase in salary as the amount of each such individual's pension relief allowance or retirement compensation in effect on the day next preceding such salary increase bore to the salary to which he would have been entitled had he been in active service on the day next preceding such salary increase. Each increase in pension relief allowance or retirement compensation under this title resulting from an increase in salary shall take effect as of the first day of the first month following the effective date of such increase in salary. (June 20, 1953, 67 Stat. 75, ch. 146, § 301.)

CROSS REFERENCE

Determination of amount of pension relief by Commissioners, § 4-505.

EFFECTIVE DATE

Section 407 of the act of June 20, 1953, provided: "This Act shall take effect on July 1, 1953".

REFERENCES IN TEXT

Sec. 12 of the act of Sept. 1, 1916, is set out as §§ 4-113, 4-114, 4-159, 4-160, 4-501, 4-503, 4-506, 4-507, 4-508, 4-509, 4-510, 4-512, 4-513, 4-514, and 11-625.

NOTES TO DECISIONS

PENSION RIGHTS OF RETIRED MEMBERS

The District of Columbia Police and Firemen's Salary Act, providing that members of District Police and Fire Departments "heretofore or hereafter retired" shall be entitled to increased pension allowances based on increases in salary they would have received thereunder, if in active service, grants members retired before its effective date increases in pension allowances based on longevity of their active service before retirement. *George L. Abell et al. v. Samuel Spencer, President, Board of Commissioners etc.* (1955, 96 U. S. App. D. C. 268, 225 F. 2d 568; reversing 125 F. Supp. 643.)

§ 4-519. Computation of pension of certain retired officers—Equivalent positions.

In computing the pension relief allowance or retirement compensation of any such individual retired before July 1, 1953 as Major and Superintendent of Police, Assistant Superintendent of Police, Chief Engineer of the Fire Department, Deputy Chief Engineer of the Fire Department, or Battalion Chief Engineer of the Fire Department of the District of Columbia, such person shall, for the purposes of this Act, be deemed to have retired as Chief of Police, Deputy Chief of Police, Fire Chief, Deputy Fire Chief, or Battalion Fire Chief, respectively. (June 20, 1953, 67 Stat. 75, ch. 143, § 302.)

EFFECTIVE DATE

Section 407 of the act of June 20, 1953, provided: "This Act shall take effect on July 1, 1953".

§ 4-520. Repealed. August 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 5 (4).

Section dealt with provisions for waiver of benefits by a member.

See new provisions in sections 4-521 to 4-538.

POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

§ 4-521. Definitions.

(a) Wherever used in sections 4-521 to 4-535—

(1) The term "member" means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the White House Police force, and any officer or member of the United States Secret Service Division to whom this section shall apply.

(2) The terms "disabled" and "disability" mean disabled for useful and efficient service in the grade or class of position last occupied by the member by reason of disease or injury, not due to vicious habits or intemperance as determined by the Board of Police and Fire Surgeons, or willful misconduct on his part as determined by the Commissioners.

(3) The term "widow" means the surviving wife of a member who was married to such individual while he was a member.

(4) The term "dependent widower" means the surviving husband of a member who was married to such individual while she was a member, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half his support from such member.

(5) The term "child" means an unmarried child, including (a) an adopted child, and (b) a stepchild or recognized natural child who received more than one-half his support from the member in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before the age of eighteen, is incapable of self-support.

(6) The term "basic salary" means regular salary established by law or regulation including any differential for special occupational assignment but shall not include overtime, holiday, or military pay.

(7) The term "annuitant" means any former member who, on the basis of his service, has met all requirements of this section for title to annuity and has filed claim therefor.

(8) The term "survivor" means a person who is entitled to annuity under this section based on the service of a deceased member or of a deceased annuitant.

(9) The term "survivor annuitant" means a survivor who has filed claim for annuity.

(10) The term "police or fire service" means all honorable service in the Metropolitan Police Department, White House Police force, Fire Department of the District of Columbia, the United States Park Police force, and the United States Secret Service Division coming under the provisions of this Act.

(11) The term "military service" means honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, but shall not include service in the National Guard except when ordered to active duty in the service of the United States.

(12) The term "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents.

(13) The term "service" means employment which is creditable under subsection (c).

(14) The term "Government" means the executive, judicial, and legislative branches of the United States Government, including Government-owned or controlled corporations and Gallaudet College, and the municipal government of the District of Columbia.

(15) The term "Government service" means honorable active service in the executive, judicial, or legislative branches of the United States Government, including Government-owned or controlled corporations, and Gallaudet College, and the municipal government of the District of Columbia, and for which retirement deductions, other than social security deductions, were made.

(16) The term "department" means any part of the executive branch of the United States Government, or any part of the government of the District of Columbia whose members come under this section. (Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3 (12a).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

APPLICABILITY OF REORGANIZATION PLAN No. 5

Section 3 (12q) of the act of August 21, 1957, cited to text, provides as follows:

(q) Where any provision of sections 4-521 to 4-535 refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in sections 4-521 to 4-535 shall be construed as a limitation on the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952.

EFFECTIVE DATE

Section 8 of the act of August 21, 1957, cited to text, makes the act effective as of October 1, 1956.

LEGISLATIVE INTENT

Section 2 of the act of August 21, 1957, classified to sections 4-521 to 4-538, cited to text, provides as follows:

It is the intent of Congress in enacting the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 (section 4-521 to 4-538) to give the members coming under such Act benefits substantially similar to benefits given by the Civil Service Retirement Act Amendments of 1956 to officers and employees covered by the Civil Service Retirement Act of May 29, 1930, as amended. (5 U. S. C. 2251 et seq.)

POPULAR NAME

Section 1 of the act of August 21, 1957, classified to sections 4-521 to 4-538, cited to text, provides that this act may be cited as the "Policemen and Firemen's Retirement and Disability Act Amendments of 1957."

SHORT TITLE

Section 3 (12r) of the act of August 21, 1957, 71 Stat. 399, which section amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535, provides as follows:

This section may be cited as the "Policemen and Firemen's Retirement and Disability Act."

§ 4-522. United States Secret Service Division—Transfer of civil service retirement funds.

(b) Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for ten years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund created by the Act of May 22, 1920 (5 U. S. C. 2267), to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under sections 4-521 to 4-535, and he shall be entitled to the same benefits as the other members to whom those sections apply. (Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3 (12b).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-523. Creditable service—Military and other government service.

(c) (1) A member's service for the purposes of sections 4-521 to 4-535 shall mean all police or fire service and such military and Government service as is authorized by sections 4-521 to 4-535 prior to the date of separation upon which title to annuity is based.

(2) Each member shall be allowed credit for periods of military service served prior to the date of the separation upon which the annuity is based; however, if a member is awarded retired pay on account of military service, such military service shall not be included, unless such retired pay is awarded on account of a service-connected disability (a) incurred in combat with an enemy of the United States or (b) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation numbered 1 (a), part I, paragraph I, or is awarded under title III of Public Law 810, Eightieth Congress (38 U. S. C. ch. 12A, 10 U. S. C. 1036-1036i). Nothing in this section shall affect the rights of members to retired pay, pension, or compensation in addition to the annuity herein provided.

(3) Credit shall be allowed for leaves of absence granted a member while performing military service, excluding from credit so much of any other leaves of absence without pay as may exceed six months in the aggregate in any calendar year.

(4) A member who, during any war or national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of this section, as separated from his position by reason of such military service, unless he shall apply for and receive his salary deductions: *Provided*, That such member shall not be considered as retaining such position beyond December 31, 1957, or the expiration of five years of such military service, whichever is later.

(5) Each member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1), subsection (a) of this section: *Provided*, That such member deposits with the Collector of Taxes of the District of Columbia, for credit to the revenues of the District of Columbia, a sum equal to the entire amount including interest, if any, refunded to him for such period of government service: *Provided further*, That if such member so elects he shall deposit with the Collector of Taxes of the District of Columbia, the total amount of such refund in equal monthly installments not exceeding 24.

(6) The total service of a member shall be the full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month.

(7) Notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under sections 4-521 to 4-538 to such individual or to his widow or child is to be based, if such individual or widow or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors benefits under section 202 of the Social Security Act (42 U. S. C. 402) based on such individual's wages and self-employment income. If in the case of the individual or widow such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in section 216 (a) of the Social Security Act) (42 U. S. C. 416) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the Commissioners shall redetermine the aggregate period of service upon which such annuity is based, effective as of the first day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health, Education, and Welfare shall, upon the request of the Commissioners, inform the Commissioners whether or not any such individual or widow or child is entitled at any specified time to such benefits. (Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3 (12c).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.

(1) On and after the first day of the first pay period which begins on or after August 21, 1957 there shall be deducted and withheld from each member's basic salary an amount equal to 6½ per centum of such basic salary. Such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(2) Any member coming under the provisions of sections 4-521 to 4-535 who is separated from his department, except for retirement as authorized by this section, shall be refunded the amount of the deductions made from his salary under sections 4-521 to 4-535. The receipt of payment of such deductions by such member shall void all annuity rights under sections 4-521 to 4-535, unless and until such member shall be reappointed to any department whose members come under sections 4-521 to 4-535. If such officer or member is subsequently

reappointed to any department whose members come under sections 4-521 to 4-535, he shall be required to redeposit the amount of deductions so refunded to him.

(3) In order to facilitate the settlement of the accounts of each member coming under the provisions of sections 4-521 to 4-535 who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of sections 4-521 to 4-535, the Commissioners shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the beneficiary or beneficiaries designated in writing by such member, filed with the Commissioners and received by them prior to the death of such member;

Second, if there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such member, or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member. (Aug. 21, 1957, 71 Stat. 393, Pub. L. 85-157, § 3 (12d); Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-693, § 1.)

AMENDMENTS

1958—Section 1 of the act of August 20, 1958, cited to text, amends par. (1) of the section to read as above set out. The act of August 21, 1957, provided that "From and after the first pay period which begins on or after October 1, 1956 * * *." The amendment changes that date to August 21, 1957.

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of the act of August 20, 1958, makes the amendment of par. (1) effective as of August 21, 1957.

§ 4-525. Medical and hospital service—Payment of by District on certificate of commissioners.

Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Commissioners, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon a certificate of the Commissioners setting forth the necessity for such services or treatment and the nature of the injury or disease which rendered the same necessary (Aug. 21, 1957, 71 Stat. 394, 85-157, § 3 (12e).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-526. Retirement for disability not incurred in performance of duty.

Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his basic salary at time of retirement: *Provided further*, That the annuity of a member retiring under this section shall be at least 40 per centum of his basic salary at time of retirement. (Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3 (12f).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended, to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-527. Retirement for disability incurred while performing duty.

(g) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement. (Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3 (12g).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

(1) Any member who attains the age of fifty years and completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year of service; except that the rate of 3 per centum of his basic salary at time of retirement shall be used to compute each year's police or fire service in excess of twenty years: *Provided*, That such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: *Provided further*, That whenever the Commissioners or the Chief of the White House Police force, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph (1), then the Commissioners or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph (1) in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Commissioners or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(2) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of sixty years shall, in the discretion of the Commissioners, and any member of the White House Police force or of the United States Park Police force or of the United States Secret Service Division to whom sections 4-521 to 4-535 apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed in paragraph (1).

(3) No annuity granted under paragraph (1) or (2) of this section shall exceed 70 per centum of the basic salary of such member at the time of retirement. (Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3 (12h).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-529. Involuntary separation from service.

If any member is injured or contracts a disease during his first five years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and if the Police

and Firemen's Retiring and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department, such member shall, upon the approval of such finding by the head of his department, and without regard for the provisions of any other law or regulation, be separated from the service. (Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3 (12i).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-530. Recovery from disability or restoration to earning capacity—Earning capacity defined—Suspension of annuity—Restoration to duty.

(1) If any annuitant retired under section 4-526 or 4-527, before reaching the age of fifty-five, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease (1) upon reemployment in the department from which he was retired, (2) one year from the date of the medical examination showing such recovery, or (3) one year from the date of determination that he is so restored, whichever is earliest. Earning capacity shall be deemed restored if in each of two succeeding calendar years the income of the annuitant from wages or self-employment or both shall be equal to at least 80 per centum of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80 per centum of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter: *Provided*, That whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

(2) When an annuitant recovers prior to age fifty-five from a disabling condition for which he has been retired, and applies for reinstatement in the department from which he was retired, he shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his separation from the service: *Provided*, That such applicant meets the current entrance requirements of such department as to character. (Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3 (12j).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-531. Survivor annuities—Amount—To whom payable—Election of type of annuity.

(1) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or dependent widower, such widow or dependent widower shall be entitled to receive an annuity in the greater amount of (1) \$1,800, or (2) 30 per centum of such member's basic salary at the time of death, or 30 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed. Such annuity shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage. If such member or former member is survived by a wife or husband, each surviving child shall be entitled to receive an annuity equal to the smallest of (1) 40 per centum of such member's basic salary at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, divided by the number of children, (2) \$600; or (3) \$1,800 divided by the number of children. If such member or former member is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (1) 50 per centum of the member's basic salary at the time of death, or 50 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, divided by the number of children, (2) \$720; or (3) \$2,160 divided by the number of children. The annuity of any child under this section shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon (1) his attaining age 18, unless incapable of self-support, (2) his becoming capable of self-support after age 18, (3) his marriage, or (4) his death.

(2) Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband or child had not survived the member or former member.

(3) Any member retiring under sections 4-526, 4-527, or 4-528, may, at the time of such retirement, elect to receive a reduced annuity in lieu of the full annuity, and designate in writing the person to receive an increased annuity after the retired annuitant's death: *Provided*, That the person so designated be the surviving spouse or child of the retiring member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such retiring member is reduced. The annuity payable to the member making such election shall be reduced by 10 per centum of the

annuity computed as provided in sections 4-526, 4-527, or 4-528. Such increase in annuity payable to the designee shall be reduced by 5 per centum for each full five years the designee is younger than the retiring member, but such total reduction shall not exceed 40 per centum. The increase in annuity payable to the designee pursuant to this paragraph (3) shall be paid in addition to the annuity provided for such designee pursuant to paragraph (1) or (2) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to such paragraphs (1) and (2). (Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3 (12k).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-532. Funeral expenses.

The Commissioners are authorized to pay a sum not exceeding \$300 in any one case to defray the funeral expenses of any deceased member dying while in the service thereof. (Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3 (12l).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-533. Duties of commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpoena—Contempt proceedings.

The Commissioners shall consider all cases for the retirement of members and all applications for annuities under sections 4-521 to 4-535. In each case of retirement of a member the Commissioners shall certify in writing the physical condition of the member for whom retirement is sought. The Commissioners shall give written notice to any member under consideration by them for retirement to appear before them and to give evidence under oath. The proceedings before the Commissioners involving the retirement of any member, or any application for an annuity under sections 4-521 to 4-535, shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information which may be pertinent to the matter of such retirement or annuity. The Commissioners are authorized to administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of docu-

ments at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may apply to the Municipal Court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of subsection (c), of section 11-756 of the D. C. Code. (Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3 (12m).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-534. Payment of annuities—Order of payment on death of annuitant—Waiver.

(1) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, accrues monthly and is payable on the first business day of the month after it accrues.

(2) Any person entitled to an annuity under sections 4-521 to 4-535 may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioners. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(3) In order to facilitate the settlement of the accounts of each person who, at the time of his death, was receiving or was entitled to receive, an annuity under sections 4-521 to 4-535, the Commissioners shall pay all unpaid annuity due such person at the time of death to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the widow or widower of such person;

Second, if there be no surviving spouse, to the child or children of such person, and descendants of deceased children, by representation;

Third, if there be none of the above, to the parents of such person or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased person, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased person. (Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3 (12n).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-535. Delegation of functions by commissioners—Regulations.

(a) The Commissioners are hereby vested with full power and authority to delegate from time to time to their designated agent or agents any of the functions vested in them by this section.

(b) The Commissioners are authorized to promulgate such rules and regulations as they may deem necessary to carry out the purposes of sections 4-521 to 4-535. (Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3 (o) and (p).)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-536. No reduction in existing relief.

Nothing in sections 4-521 to 4-538 shall be deemed to reduce the relief or retirement compensation to which any person is entitled on the effective date of sections 4-521 to 4-538 and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if sections 4-521 to 4-538 had not been enacted. (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 4.)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-537. Appropriation—Reimbursement to District of Columbia.

There are hereby authorized to be appropriated from revenues of the United States such sums as are necessary to reimburse the District of Columbia, on a monthly basis, for benefit payments made from revenues of the District of Columbia to or for Federal employees and to or for the surviving children and spouse of such Federal employees under the provisions of sections 4-521 to 4-535, to the extent that such benefit payments exceed the deductions from the salaries of Federal employees for credit to the revenues of the District of Columbia. For the purpose of this section, (a) the term "benefit payments" includes relief, retirement compensation, pensions, and annuities and medical, surgical, hospital, and funeral expenses, and (b) the term "Federal employees" means and includes such members of the United States Park Police force as are paid from funds of the United States, members of the White House Police force and such members of the United States Secret Service Division as have or may hereafter become entitled to benefits under the

Policemen and Firemen's Retirement and Disability Act (sections 4-521 to 4-535). (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 6.)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

§ 4-538. Eligibility under the Federal Employees' Compensation Act.

Notwithstanding any other provision of law, no person entitled to receive any benefit under sections 4-521 to 4-535 on account of death incurred, an injury received, or disease contracted, or an injury or disease aggravated, in the performance of duty shall be entitled, because of the same death, injury, disease, or aggravation, to benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 751, and the following) (Aug. 21, 1957, 71 Stat. 400, Pub. L. 85-157, § 7.)

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

EFFECTIVE DATE

See note under section 4-521.

Chapter 6—TRIAL BOARDS

§ 4-601 [20: 601]. Trial boards may compel attendance of witnesses—Fees.

TRANSFER OF FUNCTIONS

Reorganization Order No. 39 of the Board of Commissioners dated June 18, 1953, established in the Government of the District of Columbia a Regular Fire Trial Board and a Special Fire Trial Board with the purpose of trying and reviewing cases involving infractions of discipline or improper procedure by members of the Fire Department. The order set forth the selection, composition, and functions of the boards, and abolished the previously existing Fire Trial Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Reorganization Plan No. 48 of the Board of Commissioners dated June 26, 1953, established in the Government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board. These boards are described in the order as having been established for the purpose of insuring fair and impartial trials and reviews of cases involving infractions of discipline or improper procedure by members of the Police Department. The order set forth the selection, composition, and functions of the boards, and abolished the previously existing Police Trial and Review Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 4-603 [20: 603]. Process to secure attendance of witnesses.

TRANSFER OF FUNCTIONS

See the notes under section 4-601 concerning Fire and Police Trial Boards.

Chapter 7.—AWARDS FOR MERITORIOUS SERVICE

§ 4-701 [20: 611]. Annual awards for meritorious service.

For the official recognition of outstanding acts in the line of duty by the members of the police and fire departments of the District of Columbia there shall be awarded annually one gold medal and one or more silver medals, appropriately inscribed, to those members of each department who have by outstanding or conspicuous services earned such awards. (As amended July 24, 1956, 70 Stat. 627, ch. 685, § 1.)

AMENDMENTS

1956—The act of July 24, 1956, cited to text, amends the section to read as above set out.

Chapter 8.—SALARIES

Sec.

- 4-807. Additional compensation for working on holidays.
- 4-808. Holiday defined.
- 4-809. Applicability to White House Police force and United States Park Police force.
- 4-812. Retroactive Compensation.
- 4-817. Retroactive salary—When and to whom payable.
- 4-821. Computation of rates of compensation—Day off.
- 4-822. Repealed.

POLICE AND FIREMEN'S SALARY

- 4-823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.
- 4-824. Adjustment of salaries—Placement in salary classes and steps—Corresponding titles of step increases.
- 4-825. Positions to be included as Technician I.
- 4-826. Positions to be included as Technician II.
- 4-827. Original appointments of Police and Fire Privates.
- 4-828. Authority to establish and determine, positions to be included as Technicians in Class 1 and 2 in section 4-823—Exception.
- 4-829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.
- 4-830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.
- 4-831. Demotion—Rate of compensation.
- 4-832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4-823 to 4-827.
- 4-833. Basic compensation of United States Park Police.
- 4-834. Sections 4-823 to 4-837 not to be construed to decrease compensation of a member or officer—Vacancy provisions.
- 4-835. Commissioners authorized to promulgate regulations.
- 4-836. Retroactive salary—When and to whom payable.
- 4-837. Delegation of authority by Commissioners, Secretary of Treasury and Secretary of Interior—Exception.

§ 4-801 [20: 617]. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (2).

Section related to computation of pay of privates of Metropolitan Police force and the fire department, and was based upon act of July 1, 1930, 46 Stat. 840, ch. 783, § 3. Corresponding provisions are now set forth in sections 4-813, 4-814, 4-815 and 4-816.

§ 4-803. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, §§ 404 (a) (5), 404 (a) (6), 404 (a) (8).

Section related to salary increases for officers or members of the Metropolitan Police, the United States Park

Police, the White House Police, and the Fire Department of the District of Columbia and was based upon act of July 14, 1945, 59 Stat. 470, ch. 303, § 1, as amended, corresponding provisions are now set out in sections 4-813, 4-814, 4-815 and 4-816.

§ 4-804. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, §§ 404 (a) (5), 404 (a) (6).

Section related to an increase in annual basic salary in lieu of overtime and night differential pay for Metropolitan Police, United States Park Police, White House Police and the Fire Department of the District of Columbia; and was based upon act of July 14, 1945, 59 Stat. 470, ch. 303, § 2. Corresponding provisions are now set forth in sections 4-813, 4-814, 4-815 and 4-816.

§ 4-806. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (9).

Section related to an increase in annual basic salary for Metropolitan Police, United States Park Police, White House Police, and the Fire Department of the District of Columbia, and was based upon act of June 30, 1949, 63 Stat. 376, ch. 287, § 1, as amended. Corresponding provisions are now set forth in sections 4-813, 4-814, 4-815, 4-816 and 4-820.

§ 4-807. Additional compensation for working on holidays.

That under regulations promulgated by the Commissioners of the District of Columbia each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation: *Provided*, That for the purposes of sections 4-807 to 4-809, each such officer or member who works eight hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one-eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting thirty minutes or more as a full hour, but notwithstanding the foregoing clause of this proviso, officers and members of the Fire Department of the District of Columbia performing duty from 6 o'clock postmeridian on a holiday until 8 o'clock antemeridian the day following such holiday shall be entitled to receive additional compensation for the period from 6 o'clock postmeridian until 12 o'clock midnight equal to one day's basic compensation, and officers and members of such Fire Department performing duty from 6 o'clock postmeridian on the day preceding a holiday until 8 o'clock antemeridian on a holiday shall be entitled to receive additional compensation for the period from 12 o'clock midnight until 8 o'clock antemeridian equal to one day's basic compensation: *Provided further*, That the total compensation to be paid any such officer or member for duty performed on a holiday shall not exceed an amount equal to twice the daily rate of pay to which such officer or member shall be entitled for performing one regular tour of duty on a day other than a holiday: *And provided further*, That no such officer or member shall be entitled to additional compensation for such holiday work for any day for which he is entitled to receive additional compensation under the pro-

visions of section 4-904. So much of such compensation for such holiday work as is in excess of the regular pay for such day shall not be considered as salary for the purpose of computing retirement compensation or relief payments under this title, nor shall such excess compensation be subject to deduction as provided in sections 4-503 and 4-504. Appropriations for personal services for the Metropolitan Police force and the Fire Department of the District of Columbia, the White House Police force, and the United States Park Police force shall be available for payment of the additional compensation authorized by this section. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 4 (a).)

AMENDMENTS

Section 4 (a) of the act of July 18, 1958, cited to text, struck out the original provisions for compensation for holiday work and substituted new provisions as above set out.

§ 4-808. Holiday defined.

As used in section 4-807 the word "holiday" means the following: The 1st day of January, the 22d day of February, the 4th day of July, the 30th day of May, the first Monday in September, the 11th day of November, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Commissioners of the District of Columbia, and with respect to officers and members of the White House Police force and the United States Park Police force, such other holidays as may be designated by Executive order. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 4 (b).)

AMENDMENTS

Section 4 (b) of the act of July 18, 1958, cited to text, struck out the words "and such other days designated by Executive order" and substituted the new language which follows the word "December".

§ 4-809. Applicability to White House Police force and United States Park Police force.

The provisions of sections 4-807 to 4-810 shall be applicable to the White House Police force and the United States Park Police force, under regulations promulgated by the Secretary of the Treasury and the Secretary of the Interior, respectively. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 3.)

§ 4-810. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (10).

Section made applicable to members of the Metropolitan Police force and Fire Department of the District of Columbia provisions of section 6 of the Act of June 30, 1906 (34 Stat. 763), as amended, concerning computation of annual or monthly compensation now covered by sections 4-813, 4-814, 4-815 and 4-816.

§ 4-811. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (11).

Section related to increases in compensation for officers and members of the Metropolitan Police, the United States Park Police, the White House Police, and the Fire Department of the District of Columbia corresponding provisions are now set out in 4-813, 4-814, 4-815, 4-816 and 4-820.

§ 4-812. Retroactive Compensation.

No retroactive compensation or salary shall be payable by reason of the enactment of sections 4-811, 31-680, and 1-251, in the case of any individual not in the service of the United States (including service in the Armed Forces of the United States) or of the municipal government of the District of Columbia on the date of enactment of sections 4-811, 31-680, and 1-251, except that such retroactive compensation or salary shall be paid a retired officer or employee for services rendered during the period beginning with the first day of the first pay period which began after June 30, 1951, and ending with the date of his retirement. (Oct. 25, 1951, 65 Stat. 636, ch. 560, § 4.)

§ 4-813. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to basic salaries of the police force and was part of the act of June 20, 1953, 67 Stat. 72, as amended. See new sections 4-823 to 4-837.

§ 4-814. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to longevity increases and was part of the act of June 20, 1953, 67 Stat. 72, as amended. See new sections 4-823 to 4-837.

NOTES TO DECISIONS UNDER PRIOR LAW

PENSION RIGHTS OF RETIRED MEMBERS

The District of Columbia Police and Firemen's Salary Act, providing that members of District Police and Fire Departments "heretofore or hereafter retired" shall be entitled to increased pension allowances based on increases in salary they would have received thereunder, if in active service, grants members retired before its effective date increases in pension allowances based on longevity of their active service before retirement. *George L. Abell et al. v. Samuel Spencer, President, Board of Commissioners, etc.* (1955, 96 U. S. App. D. C. 268, 225 F. 2d 568; reversing 125 F. Supp. 643).

§ 4-815. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to basic salaries of members of the Fire Department and was a part of the act of June 20, 1953, 67 Stat. 72, as amended. See new sections 4-823 to 4-837.

NOTES TO DECISIONS UNDER PRIOR LAW

RETIREMENT PAY INCREASE

Where statute for District of Columbia provided that each policeman and fireman retired from active service and entitled to pension shall be entitled, with respect to each increase in salary, an increase in his pension, but provided that no policeman or fireman shall be entitled to a longevity increase unless he has maintained a rating of satisfactory or better, and Senate committee report provided that pension increases will not include increases based on longevity, longevity increases, that might have been earned by retired policemen and firemen had they remained in active service, should not be added to base on which retirement compensation should be recomputed. *Abell et al. v. Spencer et al.* (1954, 125 F. Supp. 643).

§ 4-816. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to longevity increases for members of the Fire Department and was a part of the act of June 20, 1953, as amended. See new sections 4-823 to 4-837.

AMENDMENTS

1958—Section 1 (a) of the act of May 19, 1958, amended subsection (a) by adding the following sentence, "In computing service for the purpose of determining longevity

increases under this section, service in the grade of inspector or assistant marine engineer, and service in the grade of private, shall be deemed to be service in the same grade." (May 19, 1958, 72 Stat. 122, Pub. L. 85-421, § 1 (a).)

Section 1 (b) struck out the last sentence in subsection (f) which was added by section 2 of the act of July 24, 1956.

This section with all of its amendments was, however, repealed by act of August 1, 1958, as shown above.

COMPENSATION PROVISIONS OF ACT OF MAY 19, 1958

Section 2 (b) of the act of May 19, 1958, provides that: "No compensation shall be payable, by reason of the enactment of this Act, for any period prior to such effective date."

EFFECTIVE DATE OF AMENDMENT

1958—Section 2 (a) of the act of May 19, 1958, provides that: "The amendments made by this Act shall take effect as of the first day of the first pay period of the Fire Department of the District of Columbia which began after July 24, 1956."

NOTES TO DECISIONS UNDER PRIOR LAW

PENSION RIGHTS OF RETIRED MEMBERS

The District of Columbia Police and Firemen's Salary Act, providing that members of District Police and Fire Departments "heretofore or hereafter retired" shall be entitled to increased pension allowances based on increases in salary they would have received thereunder, if in active service, grants members retired before its effective date increases in pension allowances based on longevity of their active service before retirement. *George L. Abell et al. v. Samuel Spencer, President, Board of Commissioners, etc.* (1955, 96 U. S. App. D. C. 268, 225 F. 2d 568; reversing 125 F. Supp. 643).

RETIREMENT PAY

Where statute for District of Columbia provided that each policeman and fireman retired from active service and entitled to pension shall be entitled, with respect to each increase in salary, an increase in his pension, but provided that no policeman or fireman shall be entitled to a longevity increase unless he has maintained a rating of satisfactory or better, and Senate committee report provided that pension increases will not include increases based on longevity, longevity increases, that might have been earned by retired policemen and firemen had they remained in active service, should not be added to base on which retirement compensation should be recomputed. *Abell et al. v. Spencer et al.* (1954, 125 F. Supp. 643).

§ 4-817. Retroactive salary—When and to whom payable.

(a) Retroactive salary shall be paid by reason of Sections 4-813 to 4-817 only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of said sections, except that retroactive salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which began after February 28, 1955, and ending on the date of enactment of said sections for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended (5 U. S. C., secs. 61f-61k), for services rendered during the period

beginning on the first day of the first pay period which began after February 28, 1955, and ending on the date of enactment of sections 4-813 to 4-817 by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia. (Aug. 5, 1955, 69 Stat. 531, ch. 570, § 5.)

COMPILER'S NOTE

See note under section 4-813.

This section does not appear to have been specifically repealed by the act of August 1, 1958, 72 Stat. 480, but appears to have been superseded by section 505 of said act, classified to section 4-836 of this chapter.

EFFECTIVE DATE

Section 6 (a) of the act of August 5, 1955, provided: "This Act shall take effect as of the first day of the first pay period which began after February 28, 1955."

§ 4-820. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to salaries of United States Park Police and was part of the act of June 20, 1953, 67 Stat. 72, as amended. See new sections 4-823 to 4-837.

§ 4-821. Computation of rates of compensation—Day off.

(a) For all pay computation purposes affecting employees covered by sections 4-518, 4-519, 4-813, 4-814, 4-815, 4-816, 4-820, 4-821, 4-822 and 4-904, or the District of Columbia Police and Firemen's Salary Act of 1958 (sections 4-823 to 4-837 of this chapter and 3 U. S. Code 204 (b)), basic per annum rates of compensation established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 (sections 4-823 to 4-837 of this chapter and 3 U. S. Code 204 (b)), shall be regarded as payment for employment during fifty-two basic administrative workweeks.

(b) Whenever for any such purpose it is necessary to convert a basic annual rate established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 (sections 4-823 to 4-837 of this chapter and 3 U. S. Code 204 (b)), to a basic bi-weekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by fifty-two or twenty-six, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by five or ten, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by two to derive a one-half daily rate; and

(D) Except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent

(c) For all officers and employees referred to in this Act, or the District of Columbia Police and Firemen's Salary Act of 1958 (sections 4-823 to 4-837 of this chapter and 3 U. S. Code 204 (b)), each pay period shall cover two administrative workweeks except that with respect to employees of the Fire Department the first pay period shall be for the period July 1 to July 11, 1953 inclusive.

(d) (1) For the purpose of computing pay of officers and members of the Fire Department of the District of Columbia for the pay period July 1 to July 11, 1953, inclusive, any day off taken by any such officer or member during the period July 1 to July 4, 1953, inclusive, shall be considered as a workday if such officer or member worked or was otherwise in a pay status for an equivalent day in the period June 28 to June 30, 1953, inclusive: *Provided*, That any such day off falling on July 4, 1953, shall not entitle any such officer or member to additional holiday compensation for that day.

(2) For the purpose of this subsection the term "day off" means any of the days off duty in each seven-day period to which each officer and member of such Fire Department is entitled pursuant to section 4-404a but such term does not include any "platoon change day off", as such term is used in such Fire Department.

(e) [Executed, see note].
(June 20, 1953, 67 Stat. 76, 77, ch. 146, § 405; July 20, 1953, 67 Stat. 182, ch. 231, § 1; June 25, 1956, 70 Stat. 338, ch. 446, § 1; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 5; Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, § 502 (b).)

AMENDMENTS

1958—Section 502 (b) of the act of August 1, 1958, cited to text amended the section by adding the phrase "or the District of Columbia Police and Firemen's Salary Act of 1958" to follow the words "this Act" wherever the same appears in the section.
1958—Section 5 of the act of July 18, 1958, cited to text, amended subsection (b) by adding "half-daily, or hourly" to the first paragraph of said subsection, and by the further addition of clauses C and D to said subsection.

1956—Act of June 25, 1956, amended the section by adding subsection (e) thereto. Since this amendment has now been executed it is carried for information purposes as a note to the section. (e) Notwithstanding the provisions of subsection (c) of this section, the period June 27 to June 30, 1956, both dates inclusive, shall constitute a special pay period for the officers and members of the Metropolitan Police force, the White House Police force and the United States Park Police force. Each day during such period shall be a workday for each such officer and member, and the provisions of subsections (a), (b), (c), and (d) of the first section of the Act entitled "An Act to provide a five-day week for officers and members of the Metropolitan Police force, the United States Park Police force, and the White House Police force", approved August 15, 1950 (64 Stat. 447), as amended (sec. 4-904, D. C. Code), shall not be applicable during such period. (June 25, 1956, 70 Stat. 338, ch. 446, § 1.)

1953—Act July 20, 1953, 67 Stat. 182, 183, ch. 231, amended section by adding after the word "workweeks" in subsection (c) the following: "except that with respect to employees of the Fire Department the first pay period shall be for the period July 1 to July 11, 1953, inclusive." and by adding subsection (d).

EFFECTIVE DATE

Section 407 of the act of June 20, 1953, provided: "This Act shall take effect on July 1, 1953".

§ 4-822. Repealed. August 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 507.

This section related to authority of District Commissioners to make regulation for the administration of sections 4-518, 4-519, 4-813 to 4-816, 4-820 to 4-822 and 4-904.

See new section 4-823 to 4-837.

POLICE AND FIREMEN'S SALARY

§ 4-823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Salary class and title	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Longevity step 7	Longevity step 8	Longevity step 9
Class 1:									
Subclass (a)----- Fire private. Police private.	\$4, 800	\$5, 000	\$5, 200	\$5, 440	\$5, 720	\$6, 000	\$6, 280	\$6, 560	\$6, 840
Subclass (b)----- Private assigned as: Station clerk. Technician I. Plain-clothes man. ¹	5, 050	5, 250	5, 450	5, 690	5, 970	6, 250	6, 530	6, 810	7, 090
Subclass (c)----- Private assigned as: Detective. Technician II. Motorcycle officer	5, 300	5, 500	5, 700	5, 940	6, 220	6, 500	6, 780	7, 060	7, 340
Subclass (d)----- Private assigned as: Precinct detective.	5, 700	5, 900	6, 100	6, 340	6, 620	6, 900	7, 180	7, 460	7, 740
Subclass (e)----- Private assigned as: Detective sergeant.	6, 200	6, 400	6, 600	6, 840	7, 120	7, 400	7, 680	7, 960	8, 240
Class 2:									
Subclass (a)----- Fire inspector.	5, 500	5, 780	6, 060	6, 340			6, 620	6, 900	7, 180
Subclass (b)----- Fire inspector assigned as: Technician I.	5, 750	6, 030	6, 310	6, 590			6, 870	7, 150	7, 430
Subclass (c)----- Fire inspector assigned as: Technician II	6, 000	6, 280	6, 560	6, 840			7, 120	7, 400	7, 680

SALARY SCHEDULE—Continued

Salary class and title	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Longevity step 7	Longevity step 8	Longevity step 9
Class 3:									
Subclass (a) -----	\$5, 900	\$6, 180	\$6, 460	\$6, 740	-----	-----	\$7, 020	\$7, 300	\$7, 580
Assistant marine engineer.									
Assistant pilot.									
Police corporal.									
Subclass (b) -----	6, 400	6, 680	6, 960	7, 240	-----	-----	7, 520	7, 800	8, 080
Corporal assigned as:									
Motorcycle officer.									
Class 4:									
Subclass (a) -----	6, 400	6, 680	6, 960	7, 240	-----	-----	7, 520	7, 800	8, 080
Fire sergeant.									
Police sergeant.									
Subclass (b) -----	6, 900	7, 180	7, 460	7, 740	-----	-----	8, 020	8, 300	8, 580
Police sergeant assigned as:									
Motorcycle officer.									
Class 5 -----	7, 000	7, 350	7, 700	8, 050	-----	-----	8, 400	8, 750	9, 100
Fire lieutenant.									
Police lieutenant.									
Class 6 -----	7, 500	7, 850	8, 200	8, 550	-----	-----	8, 900	9, 250	9, 600
Marine engineer.									
Pilot.									
Class 7 -----	8, 000	8, 350	8, 700	9, 050	-----	-----	9, 400	9, 750	10, 100
Fire captain.									
Police captain.									
Class 8 -----	9, 500	9, 850	10, 200	10, 550	-----	-----	10, 900	11, 250	11, 600
Assistant superintendent of machinery.									
Battalion fire chief.									
Deputy fire marshal.									
Police inspector.									
Class 9 -----	11, 000	11, 350	11, 700	12, 050	-----	-----	12, 400	12, 750	13, 100
Deputy fire chief.									
Deputy chief of police.									
Fire marshal.									
Superintendent of machinery.									
Class 10 -----	15, 000	15, 350	15, 700	16, 050	-----	-----	16, 400	16, 750	17, 100
Fire chief.									
Chief of police.									

¹ Service as such for over 60 consecutive calendar days.
(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85-584, § 101.)

CROSS REFERENCE

Section 502 (a) of the act of August 1, 1958, cited to text, amends section 204 (b) of Title 3, U. S. Code, by striking therefrom "section 102" and inserting in lieu thereof "section 401" and by striking therefrom "Salary Act of 1953" and inserting in lieu thereof "Salary Act of 1958".

EFFECTIVE DATE

Section 508 (a) of the act of August 1, 1958, cited to text, provides that, "This Act shall take effect as of the first day of the first pay period which begins after January 1, 1958".

GROUP INSURANCE CLAUSE

Section 508 (b) of the act of August 1, 1958, cited to text, provides as follows:

"(b) For the purpose of determining the amount of insurance for which an officer or member is eligible under the Federal Employees' Group Life Insurance Act of 1954, all changes in rates of compensation or salary which result from the enactment of this Act shall be held to be effective as of the first day of the first pay period which begins on or after the date of such enactment."

§ 4-824. Adjustment of salaries—Placement in salary classes and steps—Corresponding titles of step increases.

(a) In initially adjusting salaries, officers and members of the Metropolitan Police force and of the Fire Department of the District of Columbia, in service on the effective date of sections 4-823 to 4-837, shall be placed in salary classes and steps provided in section 4-823 as follows:

CLASS I

<i>D. C. Police and Firemen's Salary Act of 1953</i>	<i>D. C. Police and Firemen's Salary Act of 1958</i>
Private, class 1-----	Subclass (a), class 1, service step 1.
Private, class 2-----	Subclass (a), class 1, service step 2.

<i>D. C. Police and Firemen's Salary Act of 1953</i>	<i>D. C. Police and Firemen's Salary Act of 1958</i>
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Private, class 3-----	Subclass (a), class 1, service step 3.
Private, class 4-----	Subclass (a), class 1, service step 4.
Private, class 4 (with 1 longevity increase) -----	Subclass (a), class 1, service step 5.
Private, class 4 (with 2 longevity increases) -----	Subclass (a), class 1, service step 6.
Private, class 4 (with 3 longevity increases) -----	Subclass (a), class 1, longevity step 7.
Private, class 4 (with 4 longevity increases) -----	Subclass (a), class 1, longevity step 8.
Private, class 4 (with 5 longevity increases) -----	Subclass (a), class 1, longevity step 9.

(2) Each Private who, on the effective date of sections 4-823 to 4-837 was serving in a position bearing the title Probational Detective, or Precinct Detective, or Detective Sergeant, or Station Clerk, or Motorcycle Officer, or Plain-Clothesman (service as such for over 60 consecutive calendar days immediately preceding such effective date), or Technician I, or Technician II (such titles being provided by or established pursuant to authority contained in the District of Columbia Police and Firemen's Salary Act of 1953, as amended), shall be placed in the corresponding title in Sub-Class (b), or (c), or (d), or (e), of Class 1 and shall be placed in the step within such Sub-Class on the basis of his basic salary and longevity increases in the same manner as Privates in Sub-Class (a) of Class 1. The former position bearing the title "Probational Detective" shall hereafter bear the title "Detective".

CLASS 2 THROUGH CLASS 10

(3) All officers and members serving in titles provided by or established pursuant to authority con-

tained in the District of Columbia Police and Firemen's Salary Act of 1953, as amended, which correspond to titles included in class 2 through class 10 in section 4-823, shall be placed in such classes according to such titles and in the steps within such classes on the basis of their basic salary and longevity increases as follows:

<i>D. C. Police and Firemen's Salary Act of 1953</i>	<i>D. C. Police and Firemen's Salary Act of 1958</i>
Basic salary-----	Service step 1.
Basic salary (with 1 longevity increase) -----	Service step 2.
Basic salary (with 2 longevity increases) -----	Service step 3.
Basic salary (with 3 longevity increases) -----	Service step 4.
Basic salary (with 4 longevity increases) -----	Longevity step 7.
Basic salary (with 5 longevity increases) -----	Longevity step 8.

(b) In initially adjusting salaries, each officer and member entitled under sections 4-823 to 4-837 to be placed in a Class above Class 1 and whose latest promotion has been subsequent to June 30, 1953, and prior to the effective date of sections 4-823 to 4-837, shall be placed in the step of his Class which provides a salary not less than the amount he would have received under the provisions of sections 4-823 to 4-837 had he not been so promoted until the effective date of sections 4-823 to 4-837. (Aug. 1, 1958, 72 Stat. 482, Pub. L. 85-584, § 201.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

INTERNAL REFERENCE

The act of 1953, referred to in the section was classified to 4-813 to 4-817, 4-820, 4-821, 4-822, 4-904, 4-518, 4-519.

§ 4-825. Positions to be included as Technician I.

In initially adjusting salaries, the following positions shall be included as Technician I in Sub-Class (b) of Class 1 of the schedule in section 4-823:

- (a) Chief Photographer, Fire Department;
- (b) Regular first driver-operator or tillerman of a Fire Department hose wagon, pumper, aerial ladder truck, rescue squad, or fire department ambulance. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 202.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-826. Positions to be included as Technician II.

In initially adjusting salaries, the following positions shall be included as Technician II in Sub-Class (c) of Class 1 of the schedule in section 4-823:

- (a) Chief Radio Technician for the Fire Department;
- (b) Aide to the Fire Chief, Deputy Chief, Battalion Fire Chief, Fire Marshal, or Superintendent of Machinery. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 203.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-827. Original appointments of Police and Fire Privates.

All original appointments of Police and Fire Privates shall be made at the minimum rate set forth in the schedule in section 4-823, and the first year of service shall be probationary. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 301.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-828. Authority to establish and determine, positions to be included as Technicians in Class 1 and 2 in section 4-823—Exception.

The Commissioners of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Treasury, in the case of the White House Police force, and the Secretary of the Interior, in the case of the United States Park Police force, are hereby authorized to establish and determine, from time to time, the positions to be included as Technicians in Classes 1 and 2 in section 4-823, with the exception of those positions included as Technician I and Technician II in sections 4-825 and 4-826. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 302.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.

(a) Subsequent to the initial salary adjustment provided in sections 4-824 to 4-826, each officer and member, except an officer or member in service step 1, or 2, or 3, Class 1, who has not attained the maximum service step rate of compensation for the rank or title in which he is placed shall be advanced in compensation successively to the next higher service step rate for such rank or title at the beginning of the first pay period immediately subsequent to the completion of one hundred and four calendar weeks of active service, if he has a current performance rating of "satisfactory" or better.

(b) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4-823 to 4-837), rendered immediately prior to the effective date of sections 4-823 to 4-837 by any officer or member who, in the initial adjustment of salaries, is placed in service step 4 or 5, Class 1, or service step 1, or 2, or 3, Classes 2 through 9, shall be credited as follows: each five calendar days of such service shall be credited as the equivalent of two calendar days of service for the purpose of computing the first period of one hundred and four calendar weeks of active service required by this section to entitle such officer or member to an advance in compensation to the next higher service rate for his rank or title.

(c) Each officer and member serving in steps 1, 2, or 3 of Sub-Classes (a), (b), (c), (d), or (e) of Class 1 shall be advanced in compensation successively to the next higher service step rate for his current Sub-Class at the beginning of the first pay period immediately subsequent to the completion of fifty-two calendar weeks of active service in his class if he has a current performance rating of "satisfactory" or better.

(d) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4-823 to 4-837) rendered immediately prior to the effective date of this Act in the rank of Private, Class 1, or Private, Class 2, or Private, Class 3, shall be credited in computing the first period of fifty-two calendar weeks required under the provisions of this section for advancement from service steps 1, or 2, or 3, of Class I. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, § 303.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.

Any officer or member who is promoted or transferred to a higher class shall receive basic compensation at the lowest rate of such higher class which exceeds his existing rate of compensation by not less than one step increase of the class from which he is promoted or transferred. If the existing rate of compensation of an officer or member is above the maximum longevity step increase in the class from which he is promoted or transferred and there is no rate in the higher class to which he is promoted or transferred, which is at least one step increase above his existing rate, such officer or member shall receive the maximum longevity rate of such higher class or his existing rate, whichever is greater. Any officer or member in any class who is assigned or transferred to any Sub-Class within the same Class shall be placed in the same service or longevity step in such Sub-Class as that which he was in immediately prior to being so assigned or transferred. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, § 304.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-831. Demotion—Rate of compensation.

Whenever any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, or the United States Park Police force is changed or demoted from any class to a lower class, the Commissioners of the District of Columbia, or the Secretary of the Treasury, or the Secretary of the Interior, as the case may be, may, in their or his discretion, in changing or demoting such officer or member, fix his rate of compensation at any rate provided for the Class or Sub-Class to which he is changed or demoted which does not exceed his existing rate of

compensation, except that if his existing rate falls between two step rates provided in such lower class, he may receive the higher of such rates. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, § 305.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE

See note to section 4-823.

§ 4-832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4-823 to 4-837.

(a) In recognition of long and faithful service, each officer and member shall receive an additional step increase (to be known as a longevity step increase) beyond the maximum scheduled service step rate for the Sub-Class in which he is serving, or for the Class in which he is serving if there are no Sub-Classes in his Class for each 208 calendar weeks of continuous service completed by him following the effective date of sections 4-823 to 4-837 at such maximum rate or at a rate in excess thereof, without change to a higher Class, subject to all of the following conditions:

(1) No officer or member shall receive more than one longevity step increase for any two hundred and eight calendar weeks of continuous service, and in order to be eligible therefor he shall have a current performance rating of "satisfactory" or better.

(2) Not more than three successive longevity step increases may be granted to any officer or member; nor shall any officer or member be granted a longevity step increase above the maximum scheduled longevity step in the Sub-Class in which he is serving or in the Class in which he is serving if there are no Sub-Classes in his Class.

(3) Each longevity step increase shall be equal to one step increase of the class or Sub-Class in which the officer or member is serving.

(4) Each longevity step increase shall begin on the first day of the first pay period following completion of each two hundred and eight weeks.

(b) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4-823 to 4-837) rendered immediately prior to the effective date of sections 4-823 to 4-837 by any officer or member who, in the initial adjustment of salaries, is placed in service step 6, Class 1, or service step 4, Classes 2 through 9, or longevity steps 7 or 8, shall be credited as follows: each five calendar days of such service shall be credited as the equivalent of four calendar days of service for the purpose of computing the first period of two hundred and eight calendar weeks of active service required by subsection (a) of this section to entitle such officer or member to an advance in compensation to the next higher longevity step rate for his rank or title. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, § 401.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-833. Basic compensation of United States Park Police.

The rates of basic compensation of officers and members of the United States Park Police shall be the same as the rates of compensation, including longevity increases, provided in sections 4-823 to 4-837, for officers and members of the Metropolitan Police force in corresponding or similar Classes or Sub-Classes. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, § 501.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-834. Sections 4-823 to 4-837 not to be construed to decrease compensation of a member or officer—Vacancy provisions.

Nothing contained in sections 4-823 to 4-837 shall be construed to decrease the existing rate of compensation of any present officer or member, but when his position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay applicable to such position. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, § 503.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-835. Commissioners authorized to promulgate regulations.

The Commissioners of the District of Columbia are hereby authorized to promulgate such regulations as they may deem necessary to carry out the intent and purposes of sections 4-823 to 4-837. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, § 504.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-836. Retroactive salary—When and to whom payable.

(a) Retroactive salary shall be paid by reason of sections 4-823 to 4-837 only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of sections 4-823 to 4-837, except that retroactive salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which began after January 1, 1958, and ending on the date of enactment of sections 4-823 to 4-837 for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended (5 U. S. C., secs. 61f-61k), for services rendered during the period beginning on

the first day of the first pay period which began after January 1, 1958, and ending on the date of enactment of sections 4-823 to 4-837 by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, § 505.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

§ 4-837. Delegation of authority by Commissioners, Secretary of Treasury and Secretary of Interior—Exception.

The Commissioners of the District of Columbia, the Secretary of the Treasury, and the Secretary of the Interior are hereby authorized to delegate, from time to time, to their designated agent or agents, any power or function vested in them by sections 4-823 to 4-837, except those powers and functions vested in them by sections 4-831 and 4-835. (Aug. 1, 1958, 72 Stat. 486, Pub. L. 85-584, § 506.)

EFFECTIVE DATE

See note to section 4-823.

GROUP INSURANCE CLAUSE

See note to section 4-823.

Chapter 9.—MISCELLANEOUS PROVISIONS

§ 4-904. Five-day week established for officers and members of Metropolitan Police, United States Park Police and White House Police—Suspension during emergencies.

* * * * *

(e) For each day a vacancy exists in the personnel strength for which funds are appropriated by applicable appropriation acts current in any fiscal year in any particular rank of the Metropolitan Police force, the United States Park Police force, or the White House Police force, the major and superintendent of police, the Secretary of the Interior, and the Chief of the Secret Service Division may permit an officer or member of their respective forces of such rank voluntarily to perform duty on any day off granted under this section. Each such officer or member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty voluntarily performed under this subsection, such additional compensation to be paid from current appropriations. Any officer or member so volunteering to perform duty on a day off shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the

purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in sections 4-503 and 4-504.

(f) Whenever the granting of days off has been suspended and discontinued pursuant to this section, each officer and member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty which he performs by reason of the suspension and discontinuance of his days off under this section. Any officer or member so performing duty shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties to which he is entitled to or which he is subject on any regular workday. Such compensation shall be treated for the purpose of computing retirement compensation or relief payments, or for deduction, in the same manner as is compensation for duty voluntarily performed under subsection (e) of this section. (As

amended Mar. 27, 1951, 65 Stat. 27, ch. 20, § 1; June 20, 1953, 67 Stat. 76, ch. 146, § 403; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 1.)

AMENDMENTS

1955—The act of August 4, 1955, cited to text, added subsection (f).

1953—Act of June 20, 1953, amended subsection (e) by striking therefrom "(one three-hundred-and-sixtieth of his annual basic salary)", as those words appeared after "basic daily rate" in the second sentence.

1951—The act of March 27, 1951, added subsection (e).

REFERENCE IN TEXT

Sec. 12 of the act of Sept. 1, 1916, was set out as §§ 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506, 4-507, 4-508, 4-509, 4-510, 4-512, 4-513, 4-514, and 11-625.

CROSS REFERENCE

Policemen exempted from general law concerning sick leave for District employees, and included as to annual leave, § 1-312.

EFFECTIVE DATE OF AMENDMENTS

Sec. 2 of act of March 27, 1951, cited to text, provided: "This Act shall take effect on the first Sunday following the date of its enactment".

Sec. 407 of act June 20, 1953, provided: "This Act shall take effect on July 1, 1953".

Section 3 of act of August 4, 1955, provided: "This Act shall take effect on July 1, 1955".

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chapter 1.—ALLEY DWELLINGS

Sec.

5-101. Repealed.

5-102. Repealed.

5-106. Annual reports of the Authority.

§ 5-101. Repealed. August 16, 1954, 68 Stat. 730, ch. 739, § 1. Effective October 15, 1954.

Section, the act of Sept. 25, 1914, 38 Stat. 716, ch. 310, § 1, as amended Sept. 6, 1922, 42 Stat. 837, ch. 304, made it unlawful to construct or reconstruct or occupy as a dwelling certain alley dwellings.

§ 5-102. Repealed. August 16, 1954, 68 Stat. 730, ch. 739, § 1. Effective October 15, 1954.

Section, the act of Sept. 25, 1914, 38 Stat. 717, ch. 310, § 2, set out the penalties for the violation of the provisions of former section 5-101.

§ 5-106 [25:26]. Annual reports of the Authority.

(a) The objects set forth in section 5-103 shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(June 12, 1934, 48 Stat. 932, ch. 465, § 4; June 8, 1944, 58 Stat. 271, ch. 238, § 1; July 5, 1945, 59 Stat. 410, ch. 268, § 1; June 26, 1946, 60 Stat. 319, ch. 503, § 1; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18 (a); Aug. 16, 1954, 68 Stat. 731, ch. 739, § 2.)

PARTIAL REPEAL

The act of August 16, 1954, 86 Stat. 731, ch. 739, § 2, repealed Subsections (b), (c), and (d) of the section (the act of June 12, 1934, 48 Stat. 932, ch. 465, § 4 (b), (c), and (d) as amended), which made illegal on and after July 1, 1955 the occupancy, construction, alteration, moving, or conversion of alley dwellings; and provided penalties for violation. The repeal was made effective October 15, 1954.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

§ 5-314 [25:308]. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

TRANSFER OF FUNCTIONS

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953 established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection

Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the appendix to Title 1.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

§ 5-401 [25:501]. Height of certain nonfireproof dwellings limited.

NOTES TO DECISIONS

REVIEW BY COURT

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salzer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

§ 5-412 [25:521]. Zoning Commission created—Membership—Assignment of employees.

NOTES TO DECISIONS

BASIS OF DECISIONS

Zoning Commissioners of District of Columbia are entitled to consider entire situation in a particular locality and need not close their eyes to such factors as adequacy and good condition of existing buildings for uses to which they are presently being put, need of community for those uses, style and attractiveness of existing buildings and the like, since all of that is relevant to preservation of values of surrounding property. *Lewis et al. v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 72, 190 F. 2d 25).

Refusal of Zoning Commission of District of Columbia to change classification of plaintiff's property from residential to commercial based, in part, on determination of eligibility of plaintiff's properties for limited commercial use and on fact that altho classification of plaintiff's properties was residential certain of them on proper permit could lawfully be used for and by, educational or philanthropic institutions, trade associations, and professional persons, was not invalid as such uses are proper matters for consideration. *Id.*

Zoning Commission of District of Columbia was entitled to take into consideration in refusing plaintiff's request that their premises be changed in classification from residential to commercial, fact that existing residential structures on plaintiff's premises included at least one substantial apartment house, that they were well occupied, and that structures formed a useful part of housing accommodations of community. *Id.*

CONSTITUTIONALITY

The action of zoning authorities, as of other administrative offices, is not to be declared unconstitutional unless court is convinced that it is clearly arbitrary and unreasonable, having no substantial relation to general welfare, and if question is fairly debatable, zoning stands. *Lewis et al. v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 72, 190 F. 2d 25).

COURT REVIEW NOT APPEAL ON MERITS

A suit to declare a zoning order void is not an appeal on the merits of the issues presented to the Zoning Commission of the District of Columbia at its hearing. *Lewis et al. v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 72, 190 F. 2d 25).

NEW EVIDENCE

Where determination of Zoning Commission of District of Columbia that classification of plaintiff's property should not be changed from residential to commercial was made in year 1947, if after reasonable time elapsed a new application was made to Zoning Commission based on a showing of intervening occurrences and changed conditions, Commission would not be entitled to regard its previous action and the affirmance of its action by the court as conclusive against the plaintiffs. *Lewis et al. v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 72, 190 F. 2d 25).

REASONABLENESS

There is a presumption that the regulations and acts of the Zoning Commission of the District of Columbia are reasonable. *Hagans v. District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Zoning Commission of District of Columbia did not exceed its authority when it took into consideration fact that many properties in commercial areas neighboring plaintiff's premises were not yet used for business purposes, in refusing to change classification of plaintiff's property from residential to commercial. *Lewis et al. v. District of Columbia et al.* (1951, 89 U.S. App. D. C. 72, 190 F. 2d 25).

Where property situated across a street from that of plaintiff's was a vacant triangle of some two and one-half acres bounded by busy streets on which a residential development could not logically be expected and it appeared that location and characteristics of the two and one-half acre segment were such that its reclassification from residential to commercial would expose neighboring residential areas to a minimum of commercial encroachment, and where plaintiff's property was not similarly situated, differentiation by Zoning Commission of District of Columbia in refusing to change classification of plaintiff's property from residential to commercial was not discriminatory so as to render Commission's action arbitrary per se. *Id.*

REVIEW BY COURT

In reviewing exercise of discretion given to Zoning Commission for District of Columbia for establishment of a comprehensive zoning plan, it is not function of the Court to substitute its judgment for that of the Commission even for reasons which appear most persuasive. *Lewis et al. v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 72, 190 F. 2d 25).

§ 5-413 [25:531]. Zoning regulations to be made by Zoning Commission—Uniformity.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in absence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiffs' property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

ARBITRARY OR CAPRICIOUS

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

BURDEN OF PROOF

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

CONSTRUCTION OF ZONING REGULATION

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

EVIDENCE

Substantial evidence failed to sustain decision of the Board of Zoning Adjustment denying an exception to zoning regulations to permit the erection of a gasoline service station on the property of plaintiff, on the ground that the decision of the board denying the exception was arbitrary and capricious in the legal sense. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581)

EXCEPTION

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

INTENT OF ZONING REGULATION

It was not intent of zoning regulation, relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

POWER OF COMMISSION

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. *Salyer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission had power to create residential restricted zoning use district. *Hagans v. District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

REVIEW BY COURT

In action against the Board of Zoning Adjustment to set aside an order denying an application for permission to establish a gasoline service station, judicial review must be had solely on the record before the board and evidence not introduced before the board but presented to the court in the first instance could not be considered. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin

enforcement of regulation. *Salyer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

REVIEW OF ARBITRARY DECISIONS

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there has been a manifest abuse of discretion. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. *Id.*

REVIEW OF DECISION OF BOARD OF ZONING ADJUSTMENT

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that latter suit involves the question of whether the property has been taken without due process of law. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

USE OF HEARSAY EVIDENCE

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

§ 5-414 [25:532]. Purposes of zoning regulations.

NOTES TO DECISIONS

POWER OF COMMISSION

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. *Salyer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

REVIEW BY COURT

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

§ 5-417 [25:535]. Zoning Advisory Council—Creation—Membership—Submission of amendments to zoning regulations.

NOTES TO DECISIONS

REVIEW BY COURT

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer v. McLaughlin et al.* (1957, 100 U. S. App. D. C. 29, 240 F. 2d 891).

§ 5-419 [25:537]. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for engaging in business of conducting rooming house without first having obtained license and for failure to obtain certificate of occupancy, if defendant wished to rely on prior nonconforming use provision of District of Columbia zoning statute, as a defense, burden was on defendant to prove that she was operating a rooming house prior to initial restriction of such use by zoning commission. *Hagans v. District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

LICENSE

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business without such license. *Hagans v. District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

NON-CONFORMING USE

1938 District of Columbia Zoning Act providing, in effect, that lawful use of premises prior to adoption of any regulations under 1920 or 1938 District of Columbia Zoning Acts may be continued, although such use does not conform with provisions of such regulations is binding on Zoning Commission and if party can show prior nonconforming use, he is entitled to a certificate of occupancy. *Hagans v. District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

§ 5-420 [25:538]. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in absence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiffs' property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

ARBITRARY OR CAPRICIOUS

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

BURDEN OF PROOF

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

CONSTRUCTION OF ZONING REGULATION

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

EVIDENCE

Substantial evidence failed to sustain decision of the Board of Zoning Adjustment denying an exception to zoning regulations to permit the erection of a gasoline service station on the property of plaintiff, on the ground that the decision of the Board denying the exception was arbitrary and capricious in the legal sense. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

EXCEPTION

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

FUNCTION OF BOARD

Upon appeal for exception, District of Columbia Board of Zoning Adjustment is to decide whether exception sought meets requirements of regulation; though this decision must result from exercise of sound discretion, that is, legal discretion, and must not be arbitrary, capricious or unreasonable. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

INTENT OF ZONING REGULATION

It was not intent of zoning regulation, relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

PARKING LOT USE

Zoning regulation empowering Board of Adjustment to permit, in residential district, "use of unimproved lot for temporary parking of motor vehicles" meant use for temporary parking and not temporary use for parking. *Selden et al. v. Capitol Hill Southeast Citizens Association et al.* (1954, 95 U. S. App. D. C. 62, 219 F. 2d 33).

Whether use of unimproved lot in residential district as parking lot would interfere "unreasonably" within meaning of zoning regulations, with use of neighborhood properties under zone plan, could only be determined in light of all circumstances, and these included critical parking problem. *Id.*

REVIEW BY COURT

In action against the Board of Zoning Adjustment to set aside an order denying an application for permission to establish a gasoline service station, judicial review must be had solely on the record before the Board and evidence not introduced before the Board but presented to the court in the first instance could not be considered. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

REVIEW OF ARBITRARY DECISIONS

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there has been a manifest abuse of discretion. *Hyman et al. v. Coe et al.* (1956, 146 F. Supp. 24).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. *Id.*

REVIEW OF DECISION OF BOARD OF ZONING ADJUSTMENT

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that latter suit involves the question of whether the property has been taken without due process of law. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

REVIEW OF ZONING ORDER

In proceeding wherein an order of Board of Zoning Adjustment was reviewed, evidence sustained board's findings that critical parking problem existed in neighborhood concerned and that use of unimproved lot in residence district for trial period of two years as parking lot would not interfere unreasonably with use of neighboring property under zone plan. *Selden et al. v. Capitol Hill Southeast Citizens Association et al.* (1954, 95 U. S. App. D. C. 62, 219 F. 2d 33).

USE OF HEARSAY EVIDENCE

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning com-

mission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. *O'Boyle etc. v. Coe et al.* (1957, 155 F. Supp. 581).

§ 5-422 [25:540]. Building permits — Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.

TRANSFER OF FUNCTIONS

See note under section 5-314 concerning the Department of Licenses and Inspections.

Chapter 5.—UNSAFE STRUCTURES

§ 5-501 [25:471]. Structure reported unsafe, to be examined by inspector of buildings—If unsafe, notice to be given to make same secure—If safety requires, inspector may make secure.

TRANSFER OF FUNCTIONS

See note under section 5-314 concerning the Department of Licenses and Inspections.

NOTES TO DECISIONS**ABANDONMENT OF PROPERTY**

In suit by plaintiff, who was president and principal stockholder of corporate owner of building found to be in dangerous condition and ordered repaired or removed, for conversion of refrigerators belonging to plaintiff and found in building by defendants, who were employed by District of Columbia to raze the building, and who sent refrigerators to dump after plaintiff refused to get them from defendants' yard, finding that plaintiff had abandoned the refrigerators was sustained by the evidence. *Block v. Fisher* (D. C. Mun. App. 1954, 103 A. 2d 575).

Chapter 6.—INSANITARY BUILDINGS**Sec.**

5-601 to 5-615. Transferred.

5-616. Inspection by Commissioners—Condemnation—Delegation of authority.

5-617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

5-618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

5-619. Occupancy of condemned building.

5-620. Repairs or changes—Demolition—District of Columbia Building Code.

5-621. Cancellation of condemnation order—Extension of time.

5-622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payment of Costs—Effect of appeal.

5-623. Litigation involving title to property—Notice—Report to Commissioners—Court order.

5-624. Infant owner—Person non compos mentis—Appointment of guardian.

5-625. Notice—Service.

5-626. Interference with work or inspection.

5-627. Destruction, removal or concealment of copy of order affixed to building.

5-628. Review of order—Application to Condemnation Review Board—Fee.

5-629. Appeal from order—Municipal Court for the District of Columbia—Modification or vacation by court.

5-630. Neglect by tenants or occupants of building.

5-631. Penalties.

5-632. Appropriations—Payment of expenses.

5-633. Definitions—"Commissioners"—"Owner".

5-634. Suits and proceedings under prior law—Time limits.

§§ 5-601 to 5-615. Transferred.

Section 5-601 [20:401] was based upon act of May 1, 1906, 34 Stat. 157, ch. 2073, § 1, which concerned creation of the Board for the Condemnation of Insanitary Buildings now covered by sections 5-616 and 5-617.

Section 5-602 [20:402] was based upon act of May 1, 1906, 34 Stat. 157, ch. 2073, § 2, which concerned memberships, duties and procedure of the Board for the Condemnation of Insanitary Buildings now covered by section 5-617.

Section 5-603 [20:403] which was based upon act of May 1, 1906, 34 Stat. 157, ch. 2073, § 3, as amended by the act of Dec. 17, 1942, 56 Stat. 1054, ch. 762, § 1, concerned the powers and duties of the Board for the Condemnation of Insanitary Buildings now covered by sections 5-616, 5-617, and 5-618.

Section 5-604 [20:404] which was based upon act of May 1, 1906, 34 Stat. 158, ch. 2073, § 4, as amended Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 2, concerned occupation of condemned building after notice now covered by sections 5-618 and 5-619.

Section 5-605 [20:405] which was based on the act of May 1, 1906, 34 Stat. 158, ch. 2073, § 5, as amended Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 3, concerned notice to vacate condemned buildings now covered by section 5-618.

Section 5-606 [20:406] which was based on the act of May 1, 1906, 34 Stat. 158, ch. 2073, § 6, concerned repairs and changes of condemned buildings and the resultant revocation of a condemnation order now covered by sections 5-620 and 5-621.

Section 5-607 [20:407] which was based on the act of May 1, 1906, 34 Stat. 158, ch. 2073, § 7, as amended April 5, 1935, 49 Stat. 108, ch. 42 and Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 4, concerned demolition of buildings now covered by section 5-620.

Section 5-608 [20:408] which was based on the act of May 1, 1906, 34 Stat. 158, ch. 2073, § 8, as amended Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 5, concerned litigation involving title to property now covered by section 6-623.

Section 5-609 [20:409] which was based on the act of May 1, 1906, 34 Stat. 159, ch. 2073, § 9, concerned the appointment of a guardian for incompetent persons now covered by section 5-624.

Section 5-610 [20:410] which as based on the act of May 1, 1906, 34 Stat. 159, ch. 2073, § 10, concerned notice and the service of notice now covered by section 5-625.

Section 5-611 [40:411] which was based on the act of May 1, 1906, 34 Stat. 159, ch. 2073, § 11, concerned interference with persons carrying out the functions of the Board for the Condemnation of Insanitary Buildings. Similar provisions are now contained in section 5-626.

Section 5-612 [20:412] which was based on the act of May 1, 1906, 34 Stat. 159, ch. 2073, § 12, concerned destruction or concealment of affixed notices. Similar provisions are now found in section 5-627.

Section 5-613 [20:413] which was based on the act of May 1, 1906, 34 Stat. 160, ch. 2073, § 13, concerned penalties now dealt with in section 5-631.

Section 5-614 [20:414] which was based on the act of May 1, 1906, 34 Stat. 160, ch. 2073, § 14, as amended Apr. 5, 1935, 49 Stat. 109, ch. 42, related to proceedings on vacation or modification of condemnation order. Similar provisions are now found in section 5-629.

Section 5-615 [20:415] which was based on the act of May 1, 1906, 34 Stat. 161, ch. 2073, § 15, as amended Apr. 5, 1935, 49 Stat. 110, ch. 42, concerned appropriations and the payment of expenses. Similar provisions are now contained in 5-632.

TRANSFER OF FUNCTIONS

Reorganization Order No. 56 of the Board of Commissioners dated June 30, 1953, established as an independent Board, with the Department of Public Health furnishing fiscal and housekeeping services, a Board for the Condemnation of Insanitary Buildings, to be composed of an Assistant to the Engineer Commissioner who is to serve as chairman, a representative of the Department of Health, and a representative of the Department of Licenses and Inspections. The order reappointed the members of the previous board to the new Board for the

Condemnation of Insanitary Buildings, and transferred to the new board all functions of the old Board for the Condemnation of Insanitary Buildings which was abolished by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 5-616. Inspection by Commissioners—Condemnation—Delegation of authority.

That the Commissioners of the District of Columbia are authorized to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be demolished and removed, as may be required by the provisions of sections 5-616 to 5-634. The Commissioners may authorize and direct the performance of the duties imposed on them by sections 5-616 to 5-634 by such officers, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by the said Commissioners to carry out the purposes of sections 5-616 to 5-634. The Commissioners or their designated agent or agents are authorized to investigate, through personal inquiry and inspection, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. The Commissioners, and all persons acting under their authority and the authority contained in sections 5-616 to 5-634, may, between the hours of 8 o'clock ante-meridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1005, ch. 1055; Aug. 28, 1954, 68 Stat. 884, ch. 1032, § 1.)

EFFECTIVE DATE OF AMENDMENTS

The act of August 28, 1954 (§§ 5-616 to 5-634), provided as follows as to the date of its taking effect: "SEC. 20. This Act shall take effect thirty days after its approval."

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

(a) The Commissioners are directed to appoint or designate two separate boards, each to consist of not less than three members, to perform the duties and functions required by sections 5-616 to 5-634, as follows:

(1) A Board for the Condemnation of Insanitary Buildings to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity, and to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of

any building, in accordance with the provisions of sections 5-616 to 5-634.

(2) A Condemnation Review Board, no member of which shall act as a member of the Board for the Condemnation of Insanitary Buildings, to review, upon written request, any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and to affirm, modify, or vacate such order of condemnation if the Condemnation Review Board shall find that the sanitary condition of the building under examination requires the affirmation, modification, or vacation of such order of condemnation. The Condemnation Review Board shall consist of at least three members and an alternate member for each of said members, at least two-thirds of such members and at least two-thirds of such alternate members to be residents of the District of Columbia and to be selected from among the persons designated under subsection (c) of this section, and not more than one-third of such members and one-third of such alternate members may be employed by the government of the District of Columbia.

(b) A majority of the members of each of the boards established by subsection (a) of this section shall constitute a quorum, and a majority vote of the members present shall be required in connection with any act of either of the said boards. No person shall act as a member of either of the said boards who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

(c) The Commissioners shall designate a number of real property owning residents of the District of Columbia, not employed by the government of the District of Columbia or the Government of the United States, each of whom from time to time shall be designated by the Commissioners to act as a member or an alternate member of the Condemnation Review Board established under the authority of subsection (a) of this section. Each such person shall be entitled to a fee of \$25 for each day he is actually engaged in discharging his duties as a member of said Board, or as an alternate member acting in the place of a member.

(d) The several provisions of sections 4-601, 4-602, and 4-603, shall be applicable to and enforceable in any proceeding conducted under the authority of sections 5-616 to 5-634. Each person acting as a member of either of the boards required to be established by this section, and each alternate member when acting in the stead of the member for whom he is alternate, is hereby authorized to administer oaths to witnesses summoned in any proceeding conducted by either of the said boards. Any fee which may be paid any witness summoned to appear before either of the said boards shall be assessed as a tax against the property the condition of which is under investigation, such tax to be collected in the same manner as general taxes are collected in the District of Columbia: *Provided*, That whenever any order of condemnation is vacated or set aside, either by the Condemnation

Review Board or by a court, the witness fee authorized by this subsection to be assessed against the property affected by such order of condemnation shall not be so assessed, but shall be paid by the government of the District of Columbia. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 884, ch. 1032, § 2.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

ORDER ESTABLISHING BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Organization order No. 102, 54-2034, G. F. 5-601 of the Board of Commissioners of the District of Columbia established the Board for the Condemnation of Insanitary Buildings as follows:

September 27, 1954

BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

PART I

Board for the Condemnation of Insanitary Buildings.—

a. In accordance with section 2 (a) (1) of Public Law 681, 83rd Congress, there is hereby established a Board for the Condemnation of Insanitary Buildings.

b. The Board for the Condemnation of Insanitary Buildings shall consist of six members who shall serve at the pleasure of the Board of Commissioners or until their successors are appointed: an Assistant to the Engineer Commissioner who shall serve as Chairman, two representatives of the Department of Public Health, a representative of the Department of Licenses and Inspections, a representative of the Department of Sanitary Engineering, and a representative of the Office of Urban Renewal. (Par. b. amended, June 10, 1958, Order No. 58-937.)

c. No person shall act as a member of the Board for the Condemnation of Insanitary Buildings who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

d. The Department of Licenses and Inspections shall furnish the Board for the Condemnation of Insanitary Buildings with such technical facilities, advice, and assistance, and with such administrative and fiscal services as may be required to permit the effective operation of said Board.

e. The Board for the Condemnation of Insanitary Buildings may in its discretion delegate to officials or employees of the Department of Licenses and Inspections such ministerial duties and responsibilities as said Board shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Board for the Condemnation of Insanitary Buildings is established to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity and, upon completion of an investigation by the Board of the premises in question, to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of Public Law 681, 83rd Congress

PART III

Powers, authorities, and jurisdiction.—All powers, authorities, and jurisdiction authorized by Public Law 681, 83rd Congress to be exercised by the Board for the Condemnation of Insanitary Buildings are hereby assigned

to such Board. The said Board shall have jurisdiction over all matters which as of the effective date of Public Law 681, 83rd Congress, were pending before the Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953.

PART IV

Transfers to new Board.—All property and records of the present Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, shall be transferred to the new Board for the Condemnation of Insanitary Buildings established herein.

PART V

Abolition of existing Board.—The existing Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, is hereby abolished.

PART VI

Repeal of previous orders.—Reorganization Order No. 56, dated June 30, 1953, as amended, and all Commissioners' Orders in conflict with the provisions of this Order, are, to the extent of such conflict, repealed.

PART VII

Effective date.—This Order shall be effective on and after September 27, 1954.

ORDER ESTABLISHING CONDEMNATION REVIEW BOARD

Organization Order No. 103 of the Board of Commissioners of the District of Columbia was as follows:

September 27, 1954

CONDEMNATION REVIEW BOARD

Pursuant to the authority contained in Public Law 681, 83rd Congress, is hereby ordered:

PART I

Condemnation Review Board.—a. In accordance with section 2 (a) (2) of Public Law 681, 83rd Congress, there is hereby established a Condemnation Review Board.

b. The Condemnation Review Board shall consist of three members and an alternate member for each of said members, at least two of such members and at least two of such alternate members to be residents of the District of Columbia who own real property in the District of Columbia and are not employed by the District of Columbia or the Government of the United States.

c. No member or alternate member of the Condemnation Review Board shall act as a member of the Board for the Condemnation of Insanitary Buildings.

d. Each member of the Condemnation Review Board and each alternate member acting in place of a member, who is a resident of the District of Columbia owning real property in the District of Columbia and is not employed by the District of Columbia or the Government of the United States shall receive a fee of \$25.00 for each day or part thereof he is actually engaged in discharging his duties as a member of said Board, or as an alternate member acting in the place of a member.

e. Members and alternate members of the Condemnation Review Board shall be appointed by the Board of Commissioners, and such members and alternate members shall be subject to removal at the discretion of the Board of Commissioners. The members of the Condemnation Review Board shall select one of their number to serve as Chairman. Terms of members and alternate members shall be for two years commencing May 1, 1957 and May 1 of each of the odd-numbered years thereafter; members and alternate members appointed after the beginning of any of the said terms shall serve only for the balance of said term: *Provided, however,* That each member and alternate member shall serve until his successor is appointed and qualified. (Amended by Order No. 57-744, effective on May 1, 1957.)

f. No person shall act as a member of the Condemnation Review Board who has any property interest, direct or indirect, in his own right or through relatives or

kin, in the building the sanitary condition of which is under consideration.

g. The Department of Licenses and Inspections shall furnish the Condemnation Review Board with such clerical services and provide funds for such witness fees as may be required to permit the effective operation of said Board.

h. Members and alternate members of the Condemnation Review Board shall take an oath of office as follows:

"I, -----, having been duly appointed by the Board of Commissioners as a member (an alternate member) of the Condemnation Review Board, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member (an alternate member) of said Board to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART II

Purpose.—The Condemnation Review Board, upon written request by an owner of property affected by any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and upon the payment of the prescribed fee, shall review such order, shall view the property so affected, shall make findings of fact relating to the insanitary condition or conditions found to exist in or about such property, and, to the extent that the condition of the property under examination requires the affirmation, modification, or vacation of such order of condemnation, affirm, modify, or vacate such order. The Condemnation Review Board shall establish procedures for its review of orders of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and shall prepare and publish rules relating to such procedures. All actions taken by the Condemnation Review Board shall be in accordance with the provisions of Public Law 681, 83d Cong.

PART III

Powers, authorities, and jurisdiction.—All powers, authorities, and jurisdiction authorized by Public Law 681, 83d Congress to be exercised by the Condemnation Review Board are hereby assigned to such Board.

PART IV

Funds.—All funds necessary for the operations of the Condemnation Review Board, including fees to its members and alternate members, shall be provided out of appropriations for the Department of Licenses and Inspections.

PART V

Effective date.—This Order shall be effective on and after September 27, 1954.

§ 5-618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

Whenever the Board for the Condemnation of Insanitary Buildings shall find that any building or part of building is in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, the owner of such building shall be served with a notice requiring him to show cause, within a time to be specified in such notice, why such building or part of building should not be condemned. The time to be fixed in such notice shall not be less than ten days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the Board shall find that the insanitary condition of such building or part of building is such as to cause immediate danger to the health or lives of the occupants thereof or of persons

living in the vicinity, in which case a lesser time may be specified in said notice. If within the time to show cause fixed by the Board, the owner shall fail to show cause sufficient in the opinion of the Board to prevent the condemnation of such building or part of building, the Board shall issue an order condemning such building or part of building and ordering the same to be put into sanitary condition or to be demolished and removed within a time to be specified in said order of condemnation, and shall cause a copy of such order to be served on the owner and a copy to be affixed to the building or part of building condemned. The Board shall give the owner reasonable time within which to put the building in sanitary condition, but such time shall be not less than six months after the date of service of said order on said owner, unless the Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. From and after fifteen days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building, no person shall occupy such building or part of building. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42, Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 885, ch. 1032, § 3.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

NOTES TO DECISIONS

AFFIRMANCE ON APPEAL

Conviction for occupying a building for human habitation subsequent to condemnation thereof was sustained by evidence. *Hammond v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

CONCESSION OF GUILT BY COUNSEL

In prosecution for occupying a building for human habitation subsequent to condemnation thereof, defendant's testimony that she had lived in building from period prior to its condemnation up until time of trial constituted an admission of guilt; and under such evidence and all circumstances of case, defendant's counsel's statement to court that he was satisfied of his client's guilt did not constitute such concession away of substantial rights of his client as would require reversal of conviction. *Hammond v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

SENTENCE

Monetary portion of sentence of \$150 or 30 days imprisonment, for occupying a building for human habitation subsequent to condemnation thereof, was excessive. *Hammond v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

§ 5-619. Occupancy of condemned building.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings under the authority contained in sections 5-616 to 5-634, after fifteen days, exclusive of Sundays and legal holidays, or within such additional time as may be

fixed by the Board, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on the owner, after fifteen days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from the date on which said copy of such order of condemnation was so affixed. (May 1, 1906, 34 Stat. 158, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 886, ch. 1032, § 4.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954, by section 20 of the 1954 act.

§ 5-620. Repairs or changes—Demolition—District of Columbia Building Code.

The owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall, within the time specified by the Board for the Condemnation of Insanitary Buildings in the order of condemnation, or any extension of time which may be granted by the Board, (1) make such changes or repairs as will remedy the conditions which led to the condemnation of such building or part of building, or (2) cause such building or part of building to be demolished and removed: *Provided*, That any owner repairing a building or part of building in accordance with the provisions of sections 5-616 to 5-634 shall be required to make only those repairs which are reasonably related to a correction of the insanitary condition or conditions found by said Board to exist in or about said building, and nothing in sections 5-616 to 5-634 shall be construed as authorizing the Board to require any repair not reasonably related to the correction of any insanitary condition in or about such building, or to require such building to be brought fully into conformity with the District of Columbia Building Code or other building regulations in effect at the time such repairs are made. Whenever any building is repaired or demolished in accordance with the requirements of this section, such repair or demolition shall be performed in such manner and under the authority of such permit as may be required by any applicable law or regulation. (May 1, 1906, 34 Stat. 158, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 4; Aug. 28, 1954, 68 Stat. 886, ch. 1032, § 5.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-621. Cancellation of condemnation order—Extensions of time.

If the owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall make such changes or repairs as will remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the con-

ditions which led to the condemnation of such building or part of building, the order of condemnation shall be canceled and the building may again be occupied. If the owner cannot make such changes or repairs within the period within which the owner may lawfully permit such building or part of building to be occupied under section 5-619, but proceeds with such changes or repairs with reasonable diligence during such period, said Board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein, and within which the owner of such building may permit the said occupants so to remain. (May 1, 1906, 34 Stat. 158, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 886, ch. 1032, § 6.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payment of costs—Effect of appeal.

If the owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall fail to remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the condition or conditions which led to the condemnation thereof, by failing to cause such building or part of building to be put into sanitary condition or to be demolished and removed within the time specified by said Board in the order of Condemnation or any extension thereof, he shall be deemed guilty of a misdemeanor and be liable to the penalties provided by section 5-631, and such building or part of building may be put into sanitary condition or be demolished and removed under the direction of said Board, and the cost of such repairs or such demolition and removal, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected in the same manner as general taxes are collected in the District of Columbia: *Provided*, That the pendency of any review or appeal provided for by sections 5-628 and 5-629 shall stay the operation of any order issued by said Board, unless said Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 886, ch. 1032, § 7.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634.

The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-623. Litigation involving title to property—Notice—Report to Commissioners—Court order.

Whenever the Board for the Condemnation of Insanitary Buildings is in doubt as to the ownership of any building or part of a building, the condemnation of which is contemplated, because the title thereto is in litigation, said Board may notify all parties to the suit and may report the circumstances to the Commissioners of the District of Columbia, who may bring such circumstances to the attention of the court in which such litigation is pending for the purpose of securing such order or decree as will enable said Board to continue such condemnation proceedings, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose. (May 1, 1906, 34 Stat. 158, ch. 2078; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 837, ch. 1032, § 8.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-624. Infant owner—Person non compos mentis—Appointment of guardian.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, the Board for the Condemnation of Insanitary Buildings shall report that fact to the Commissioners of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by sections 5-616 to 5-634, and any judge of the United States District Court for the District of Columbia is hereby authorized to appoint a guardian or guardians for such purpose. (May 1, 1906, 34 Stat. 159, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 887, ch. 1032, § 9.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954, by section 20 of the 1954 act.

§ 5-625. Notice—Service.

Any notice required by sections 5-616 to 5-634 to be served shall be deemed to have been served if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said

notice relates; or if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post office authorities; or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice to a corporation shall, for the purposes of sections 5-616 to 5-634, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notice to a foreign corporation shall, for the purposes of sections 5-616 to 5-634, be deemed to have been served if served on or any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia. (May 1, 1906, 34 Stat. 159, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 887, ch. 1032, § 10.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-626. Interference with work or inspection.

No person shall interfere with the Commissioners or with any person acting under authority and by direction of said Commissioners in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by sections 5-616 to 5-634 to be done by or by authority and direction of said Commissioners. (May 1, 1906, 34 Stat. 159, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 888, ch. 1032, § 11.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-627. Destruction, removal or concealment of copy of order affixed to building.

No person shall, without the consent of the Board for the Condemnation of Insanitary Buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of the said Board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed

shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to the Board (unless he had good reason to believe that such copy of such an order has been removed by authority of the Board), and if such copy of such order has been concealed, he shall forthwith expose the same to view. (May 1, 1906, 34 Stat. 159, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 888, ch. 1032, § 12.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-628. Review of order—Application to Condemnation Review Board—Fee.

Any owner of property affected by an order of condemnation issued under the authority contained in sections 5-616 to 5-634 shall be entitled to a review of such order by the Condemnation Review Board established by the Commissioners in accordance with the provisions of section 5-617, upon making application to said Condemnation Review Board, in writing, within fifteen days from the date on which such owner has been served notice of such order of condemnation, and upon payment of a fee of \$25. The said Condemnation Review Board shall be authorized by the Commissioners to affirm, modify, or vacate any order of condemnation issued under the authority contained in sections 5-616 to 5-634. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 888, ch. 1032, § 13.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-629. Appeal from order—Municipal Court for the District of Columbia—Modification or vacation by court.

The owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 may, within fifteen days from the date on which such owner receives notice that such order of condemnation has been reviewed by the Condemnation Review Board established in accordance with section 5-617 and has been affirmed or modified by such Board, appeal to the Municipal Court for the District of Columbia for the modification or vacation of said order of condemnation. The municipal court shall give precedence to any such case, shall hear the testimony adduced therein, shall view the building or part of building affected by said order of condemnation, and thereafter shall affirm, modify, or vacate said order. In any proceeding instituted in accordance with the provisions of this subsection, such proceeding shall be conducted by the judge only, and nothing herein contained shall be construed as authorizing or entitling the owner of property affected by such order of condemnation to a trial by jury. (May 1, 1906, 34 Stat.

157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 49; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 888, ch. 1032, § 14.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-630. Neglect by tenants or occupants of building.

Whenever any insanitary condition which has led to the condemnation of a building or part of building has been caused in any part by the action or by the neglect of the tenant or tenants, occupant or occupants thereof, such tenant, tenants, occupant, or occupants shall be guilty of a misdemeanor and be liable to the penalties provided in section 5-631. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 889, ch. 1032, § 15.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-631. Penalties.

Any person violating or aiding or abetting in violating sections 5-618, 5-619, 5-620, 5-622, 5-626, 5-627, or 5-630 shall, upon conviction thereof in the Municipal Court for the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. (May 1, 1906, 34 Stat. 160, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 889, ch. 1032, § 16.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

NOTES TO DECISIONS

SENTENCE

Monetary portion of sentence of \$150 or 30 days imprisonment, for occupying a building for human habitation subsequent to condemnation thereof, was excessive. *Hammond v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554)

§ 5-632. Appropriations—Payment of expenses.

Except as herein otherwise authorized all expenses incident to the enforcement of sections 5-616 to 5-634 shall be paid from appropriations made from time to time for that purpose in like manner as other appropriations for the expenses of the District of Columbia. (May 1, 1906, 34 Stat. 161, ch. 2073; Apr. 5, 1935, 49 Stat. 110, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 889, ch. 1032, § 17.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634

The amendments were made effective September 27, 1954, by section 20 of the 1954 act.

§ 5-633. Definitions—"Commissioners"—"Owner".

(a) For the purposes of sections 5-616 to 5-634, the term "Commissioners" shall mean the Commissioners of the District of Columbia or their designated agent or agents; and the term "owner" shall mean (1) any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of the property found by the Commissioners to be in an insanitary condition; (2) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or (3) a trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

(b) Wherever under sections 5-616 to 5-634 any act is to be performed by, or any notice is to be given, an owner, such act may be performed by an agent of such owner, or such notice may be given to an agent of such owner who collects rent or otherwise acts as an agent for the owner in connection with said property. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 889, ch. 1032, § 18.)

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

§ 5-634. Suits and proceedings under prior law—Time limits.

(a) All suits and proceedings instituted by or against the Board for the Condemnation of Insanitary Buildings in the District of Columbia created by § 5-601, or the Board for the Condemnation of Insanitary Buildings established by the Commissioners under the authority of Reorganization Plan Numbered 5 of 1952, prior to September 27, 1954, shall be deemed to have been taken by, or instituted by or against, the Commissioners of the District of Columbia.

(b) With respect to any building or part of building condemned by either of the Boards aforesaid prior to September 27, 1954, and which building or part of building stands condemned as of September 27, 1954, the six-month period provided by section 5-618 shall commence running from September 27, 1954.

(c) Wherever any provision of sections 5-616 to 5-634 refers to any order of the Board for the Condemnation of Insanitary Buildings, such provision shall mean the order of such Board, or, if such order be reviewed by the Condemnation Review Board, as such order has been affirmed or modified by the latter Board; and wherever sections 5-616 to 5-634 establishes any time limit within which there shall be compliance with an order of the Board for the Condemnation of Insanitary Buildings, such time limit shall begin running from the date on which the owner of the property affected by said order is served with notice thereof, or, if such order be re-

viewed by the Condemnation Review Board, from the date on which the owner of such property receives notice that such order has been affirmed or modified by the latter Board. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 889, ch. 1032, § 19.)

EFFECTIVE DATE

The act of August 28, 1954 (§§ 5-616 to 5-634), provided as follows concerning the effective date: "Sec. 20. This Act shall take effect thirty days after its approval." The effective date was therefore September 27, 1954.

AMENDMENTS

1954—The act of August 28, 1954, amended the act of May 1, 1906, generally and is set out as §§ 5-616 to 5-634. The amendments were made effective September 27, 1954 by section 20 of the 1954 act.

Chapter 7.—HOUSING REDEVELOPMENT

§ 5-701. General purposes.

CROSS REFERENCE

For authority of Commissioners to use squares 354 and 355 and certain water frontage for Southwest Freeway and redevelopment of Southwest area, see act of August 28, 1958, Pub. L. 85-821.

NOTES TO DECISIONS

CONSTITUTIONALITY

Fifth Amendment to the Federal Constitution does not prohibit Congressional legislation to make Nation's capital beautiful as well as sanitary. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

§ 5-702. Definitions.

* * * * *

(g) "Lessee" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the lease of a project area or part thereof, and includes the successors or assigns and successors in title of any lessee.

* * * * *

(j) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

* * * * *

(1) "Purchaser" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the sale of a project area or part thereof and includes the successors or assigns and successors in title of any

purchaser. (Aug. 28, 1958, 72 Stat. 1102, Pub. L. 85-854, § 1 (1, 2, 3).)

AMENDMENTS

1958—Section 1 (1, 2, 3) of the act of August 28, 1958, cited to text, made the following amendments to the section:

(1) Struck out subsection "g" and substituted the new subsection "g" set out above;

(2) Struck out the phrase "after public hearing" from subsection "j";

(3) Struck out subsection "l" and substituted the new subsection "l" as set out above.

NOTES TO DECISIONS

AID OF PRIVATE ENTERPRISE

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

SCOPE OF JUDICIAL REVIEW

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

SLUM

The word "slum" within meaning of the District of Columbia Redevelopment Act of 1945, authorizing seizure of realty for slum clearance and prevention, means conditions injurious to the public health, safety, morals, and welfare. *Schneider v. District of Columbia et al.*, *Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

URBAN RENEWAL ON AREA BASIS

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis, thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138)

§ 5-703. Establishment and powers of the Agency.

NOTES TO DECISIONS

ADMINISTRATIVE DETERMINATION

In condemnation proceeding under the District of Columbia Redevelopment Act, District Court could not substitute its judgment for that of the legally authorized administrative agencies as to whether the properties sought to be seized were slum properties. *District of Columbia Redevelopment Land Agency v. 70 Parcels of Land, etc.* (1954, 153 F. Supp. 840).

The necessity for seizure of title to realty by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 involves facts and judgment that are essentially for the administrators of the act, and function of the courts is limited to determining whether conclusions of the administrators are within reason on the record and within the congressional delegation of authority. *Schneider v. District of Columbia et al.*, *Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

AID OF PRIVATE ENTERPRISE

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

JUDGMENT OF THREE JUDGE COURT

Where three-judge District Court upheld, with certain limitations, constitutionality of District of Columbia Re-

development Act and appeal was pending in Supreme Court, the one-judge District Court hearing the summary judgment motion of the District of Columbia Redevelopment Land Agency was bound by the judgment of the three-judge District Court. *District of Columbia Redevelopment Land Agency v. 70 Parcels of Land, etc.* (1954, 153 F. Supp. 840).

POWER OF CONGRESS

Congress has the power to delegate to the District of Columbia the power to clear slums. *Schneider v. District of Columbia et al., Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

SCOPE OF JUDICIAL REVIEW

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

SUMMARY JUDGMENT

On motion for summary judgment in condemnation proceeding under District of Columbia Redevelopment Act, record disclosed no genuine issue of fact as to whether the authorized officials acted beyond the scope of the act, in including the property sought to be taken within the project area. *District of Columbia Redevelopment Agency v. 70 Parcels of Land, etc.* (1954, 153 F. Supp. 840).

TITLE TO PROPERTY

Under District of Columbia Redevelopment Act of 1945, the redevelopment land agency created by the act had right and power to take full title to realty involved in all cases in which it considered such acquisition necessary to carry out project. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

Whether acquisition of full title to real property involved in condemnation proceedings was necessary to carry out project was a question for the redevelopment land agency created by the District of Columbia Redevelopment Act of 1945, and it was not within the province of the courts to determine such necessity. *Id.*

URBAN RENEWAL ON AREA BASIS

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

§ 5-704. Power to acquire and assemble real property.

NOTES TO DECISIONS

AID OF PRIVATE ENTERPRISE

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

COMMERCIAL PROPERTIES

In view of fact that the District of Columbia Redevelopment Act of 1945 applies alike to all realty, which meets the conditions laid down in the act, and authorizing acquisition by condemnation of realty for purpose of the act without differentiating between kinds of realty, application of the act to commercial properties is not without due process of law, on ground that it is not authorized by the act. *Schneider v. District of Columbia et al., Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

CONSTITUTIONALITY

In determining constitutionality of housing redevelopment legislation, in action to enjoin condemnation of property, Supreme Court would not pass upon issue

whether particular housing project was or was not desirable. *Berman v. Parker* (1954, 348 U.S. 26, 75 S. Ct. 98).

Rights of property owners who were defendants in condemnation proceedings instituted pursuant to District of Columbia Redevelopment Act of 1945 were satisfied upon receipt of just compensation for the taking, as required by the Fifth Amendment to the Federal Constitution. *Id.*

The District of Columbia Redevelopment Act of 1945 goes no further than to permit the District of Columbia Redevelopment Land Agency to seize title to realty, on which slums exist or on which a slum may be foreseen, for purpose of eliminating or preventing conditions injurious to the public health, safety, morals, or welfare, and therefore the act is valid. *Schneider v. District of Columbia et al., Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

EMINENT DOMAIN

The clearance of a slum is a public purpose, and condemnation of improvements, which create hazards to health, safety, etc., is within the power of eminent domain. *Schneider v. District of Columbia et al., Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

The District of Columbia Redevelopment Land Agency had power under the District of Columbia Redevelopment Act of 1945 to acquire by eminent domain realty to be devoted to streets, schools, recreation centers, parks, for construction of low-cost housing, and other public uses. *Id.*

Congress did not in the District of Columbia Redevelopment Act of 1945 confer power on the District of Columbia Redevelopment Land Agency to seize realty beyond reasonable necessities of slum clearance and prevention. *Id.*

POLICE POWER

The power of the District of Columbia Redevelopment Land Agency to clear slums lies within the well-established concepts of police power, which is the protection of the public health, safety, morals, and welfare. *Schneider v. District of Columbia et al., Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

SCOPE OF JUDICIAL REVIEW

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

STANDARDS

Standards contained in District of Columbia Redevelopment Act of 1945 were sufficiently definite and adequate to sustain delegation of authority, to agencies concerned for execution of plan to eliminate not only slums but also blighted areas which tend to produce slums. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

URBAN RENEWAL ON AREA BASIS

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

§ 5-705. General and project area redevelopment plans.

NOTES TO DECISIONS

AID OF PRIVATE ENTERPRISE

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

AREA PLANNING

Congress had power, in enacting housing legislation applicable to District of Columbia, to provide that whole area should be redesigned, notwithstanding contention of owner of commercial structure sought to be condemned that his particular building did not imperil health or safety nor contribute to making of slum or blighted area. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

BASIS FOR SEIZURE

Title to realty cannot be seized by the Government merely because a slum presently exists on the realty, and some further necessitous circumstance must exist to validate such a seizure, and it must be either that the clearance of the slum is impracticable without taking title to realty or that proposed restrictions, which can be imposed only through medium of resale, are fairly calculated to prevent recurrence of slum conditions. *Schneider v. District of Columbia et al.*, *Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

DIVERSIFICATION IN FUTURE USE

Diversification in future use of entire area for new homes, schools, churches, parks, streets and shopping centers was relevant to maintenance of desired housing standards and was therefore within congressional power in enactment of redevelopment legislation applicable to District of Columbia. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

PROPERTY INCLUDED

Property which, standing by itself, is innocuous and unoffending may be taken for redevelopment pursuant to District of Columbia Redevelopment Act of 1945. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

PUBLIC HEARING

Question of necessity for public hearing antecedent to designation of urban renewal project area became moot when designation was rescinded and, accordingly, the Court of Appeals was precluded from reviewing that question on appeal from summary judgment for defendants in suit challenging action of Commissioners of District of Columbia in designating area, and appropriate procedure was for Court of Appeals to direct that judgment in favor of defendants be vacated and that case be remanded to District Court for dismissal of complaint. *Gudelsky et al. v. Spencer et al.* (1957, 100 U. S. App. D. C. 56, 242 F. 2d 29).

REDEVELOPMENT AREA

The District of Columbia Redevelopment Act of 1945 does not authorize the seizure, redevelopment and sale of all realty in any area that the District of Columbia Redevelopment Land Agency might select as appropriate, merely because the area includes a slum area. *Schneider v. District of Columbia et al.*, *Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

Congress, in enacting the District of Columbia Redevelopment Act, had no power to authorize seizure by eminent domain of realty for sole purpose of redeveloping area according to the judgment of the administrators of the act as to what a well-developed, well-balanced neighborhood would be, if no slum existed in the area and the seizure was not for public use. *Id.*

SCOPE OF JUDICIAL REVIEW

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

URBAN RENEWAL ON AREA BASIS

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia*

Redevelopment Land Agency v. 40 Parcels of Land etc. (1959, 171 F. Supp. 138)

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

(a) After any real property in the project area shall have been acquired by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Justice of the District Court of the United States for the District of Columbia.

(b) The Agency, after it has acquired any or all of the real property in the project area, shall have the power to lease or sell so much thereof as is not to be devoted to public use, as an entirety or parts thereof separately to lessees or purchasers. Said real property may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease and every contract of sale and deed shall provide that the lessee or purchaser shall (1) devote the real property to the uses specified in the approved project area redevelopment plan or approved modifications thereof; (2) begin within a reasonable time any improvements on the real property required by the plan; and (3) comply with such other conditions as the Agency may find necessary to carry out the purposes of this chapter: *Provided*, That clause (2) of this sentence shall not apply to a mortgagee or trustee under deed of trust or others who acquire an interest in such real property as the result of the enforcement of any lien or claim thereon. In the instrument, or instruments, of lease

or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey (except to a mortgagee or trustee under a deed of trust) the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under sections 5-701 to 5-719) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private lessee or purchaser shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(g) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: *Provided*, That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(h) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

(i) In the lease or sale of a project area or part thereof which is designated for commercial or industrial use under the project area redevelopment plan, the Agency shall establish a policy which in its judgment will provide, to business concerns which are displaced from a project area, a priority of opportunity to relocate in commercial or industrial facilities provided in connection with such development. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1 (4-11).)

AMENDMENTS

1958—Section 1 (4-11) of the act of August 28, 1958, cited to text, made the following amendments to the section.

(1) In subsection (a) struck out the word "the" where it first appeared and changed it to "any", and struck out the word "assembled" in the first sentence and changed it to "acquired".

(2) Struck out the first sentence in subsection (b) and inserted a new sentence as above set out; and struck the word "remainder" and inserted "real property" in the second sentence.

(3) Struck out the second sentence in subsection (d) and inserted the new sentence above set out.

(4) Inserted the clause in parenthesis in subsection (e) and struck out the words "or mortgagee".

(5) Struck out subsection (f) and redesignated the remaining subsections as (f), (g), and (h).

(6) Struck out of subsection (f) as redesignated in the second sentence the phrase "redevelopment company, individual or partnership" and inserted in lieu thereof "lessee or purchaser".

(7) Inserted a new subsection (i) as set out above.

NOTES TO DECISIONS

AID OF PRIVATE ENTERPRISE

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138)

PRIVATE USE

Congressional legislation authorizing community redevelopment in the District of Columbia was not unconstitutional as taking from one business man for the benefit of another, though it authorized condemnation of commercial structures and use of private enterprise for redevelopment, and permitted certain property owners in area to repurchase their property for redevelopment in harmony with overall plan. *Berman v. Parker* (1954, 348 U. S. 26, 75 S. Ct. 98).

SCOPE OF JUDICIAL REVIEW

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

SUBSEQUENT USE

If realty is seized by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 for purpose of eliminating or preventing slums, fact that realty may be sold subsequently to private persons does not vitiate the validity of the seizure. *Schneider v. District of Columbia et al.*, *Morris v. District of Columbia Redevelopment Land Agency et al.* (1953, 117 F. Supp. 705).

The taking of title to realty by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 for public purpose of eliminating or preventing slums is within the power of eminent domain, even though use to which realty is put after seizure is not a public use, provided that seizure of title is necessary for elimination of slums, or that proposed disposition of title may reasonably be expected to prevent the otherwise probable development of a slum. *Id.*

URBAN RENEWAL ON AREA BASIS

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land etc.* (1959, 171 F. Supp. 138).

§ 5-709. Use-value appraisals.

Before leasing or selling any piece or tract of land in the project area which is to be used for private uses or for low rent housing, the Agency shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon such piece or tract of land, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

The aggregate use-values placed by the Agency upon pieces or tracts of land within a particular project area leased or sold by the Agency for private uses and for low-rent housing, shall not be less than one-third of the aggregate cost to the Agency of acquiring such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof). (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1 (12).)

AMENDMENTS

1958—Section 1 (12) of the act of August 28, 1958, cited to text, amended the section as follows:

(1) Struck out of the first paragraph the phrase at the beginning starting with "After the Agency" and ending with "area, it" and substituted the new matter beginning with "Before leasing" and ending with "Agency". Also struck out the phrase in the same paragraph beginning with "each piece or tract" and ending with "low rent housing" and inserted in lieu thereof the words "such piece or tract of land".

(2) Struck out the second paragraph and inserted the new second paragraph above set out.

§ 5-710. Protection of redevelopment plan.

(c) The Agency may require that any lessee or purchaser to which any project area or part thereof is leased or sold under this chapter shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and the Agency may, in its discretion, require, for such period as it may specify, that no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the lessee or purchaser incurred for or in relation to any property or enterprise outside of said area. (Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1 (13).)

AMENDMENTS

1958—Section 1 (13) of the act of August 28, 1958, cited to text, amended subsection (c) to read as above set out.

§ 5-711. Modification of redevelopment plans.

An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification after ten days' public notice. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1 (14).)

AMENDMENTS

1958—Section 1 (14) of the act of August 28, 1958, cited to text, struck out the second sentence and inserted the new second sentence above set out.

§ 5-717. Encouragement and aid to private lending institutions.

(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan

associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: *Provided*, That no such loan without security shall be made in a sum in excess of \$2,500 unless insured as provided in title I of the National Housing Act, as amended.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in sections 5-701 to 5-719. Any life-insurance company organized under the laws of the District or formed or organized under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: *Provided*, That no such loan or advance shall be made in a sum in excess of \$2,500 unless insured as provided in title I of the National Housing Act, as amended: *And provided further*, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 19; Aug. 2, 1954, 68 Stat. 530, ch. 649, § 315.)

AMENDMENTS

1954—The act of August 2, 1954, amended the section by inserting “\$2,500 unless insured as provided in title I of the National Housing Act, as amended” for “\$2,000” in the two places it previously appeared.

§ 5-717a. Acceptance of financial assistance authorized.

(a) As an alternative method of financing its authorized operations and functions under the provisions of this chapter (in addition to that provided in section 5-715), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, as amended, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under this chapter for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, as amended, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, as amended, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from

the Administrator advances of funds for surveys and plans in preparation of a project or projects authorized by this chapter which may be assisted under title I of the Housing Act of 1949, as amended, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under this chapter with respect to the project or projects to be assisted under title I of the Housing Act of 1949, as amended.

(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

(d) Notwithstanding the limitation contained in the last sentence of section 110 (d) or in any other provision of title I of the Housing Act of 1949, as amended, the Administrator is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110 (d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949, as amended. In the event such local grants-in-aid as are so allowed by the Administrator are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, as amended, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Administrator may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Administrator pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

(e) All receipts of the Agency in connection with any project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, whether in the form of advances of funds, loans, or capital grants made by the Administrator to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of this chapter with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Administrator or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended—

(1) sections 5-702 (f), 5-702 (k), and 5-706 (g), and the last sentence of section 5-705 (b) (2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5-705 (b) (2), shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(3) notwithstanding any other provisions of this chapter, the Agency, pursuant to section 5-706 (a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capital Housing Authority those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949, as amended. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, as amended, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

(h) Nothing contained in this section or in any other section of this chapter shall relieve the Administrator of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949, as amended. The Administrator shall not enter into any contract of financial assistance under title I of this chapter with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress.

(i) In addition to its authority under any other provision of this chapter, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are defined in title I of the Housing Act of 1949, as amended), and in connection therewith the Agency, the District Commissioners, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: *Provided*, That for the purpose of this subsection the word "redevelopment" wherever found in this chapter (except in section 5-702 (n)) shall mean "urban renewal", and the references in section 5-705 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project.

(j) The District Commissioners are hereby authorized to prepare a workable program as prescribed by section 101 (c) of the Housing Act of 1949, as amended, and are also authorized to request the necessary funds for the preparation of said workable program. The Commissioners may request the participation of the Agency in the preparation of said workable program and may include in their annual estimates of appropriations such funds as may be required by the Commissioners or the Agency, or both, for this purpose. The District Commissioners are hereby authorized, with or without reimbursement, to cooperate with the Agency in carrying out urban renewal projects and to utilize for that purpose the facilities and personnel of the District of Columbia under agreement with the Agency. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 20 as renumbered and added July 15, 1949, 63 Stat. 441, ch. 338, § 609; Aug. 2, 1954, 68 Stat. 630, ch. 649, § 316.)

AMENDMENTS

1954—The act of August 2, 1954, amended the section by adding "as amended" after the year "1949" wherever it appeared, and by adding new subsections (i) and (j).

UNITED STATES CODE REFERENCE

Title I of the Housing Act of 1949 appears in the United States Code as sections 1451 to 1460 of Title 42, U.S.C.

TITLE 6.—HEALTH AND SAFETY

Chap.	Sec.
13. Cancer and Malignant Neoplastic Diseases.....	6-1301

Chapter 1.—HEALTH DEPARTMENT— ORGANIZATION

§ 6-101 [20: 981]. Director of public health—Appointment of duties.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department is set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

See note under section 4-510 concerning membership of the Director of Public Health on the Police and Firemen's Retirement and Relief Board.

§ 6-103. Repealed. Aug. 21, 1959, 73 Stat. 414, Pub. L. 86-178, § 1.

This section dealt with the issuance of transcripts for birth, death and marriage records and is now covered by section 1-244(g). Section 30 of the act of August 21, 1959, makes the repeal effective 60 days after approval of the act.

§ 6-117 [20: 997]. Tuberculosis Sanatoria under direction of Health Department.

The following hospital and sanatoria, on and after July 1, 1937, shall be under the direction and control of the health department of the District of Columbia and subject to the supervision of the Board of Commissioners: Tuberculosis Sanatoria and Gallinger Municipal Hospital. (June 29, 1937, 50 Stat. 376, ch. 403, § 1.)

COMPILER'S NOTE

This section is from the District of Columbia appropriation act for the year 1938. Previous editions of the code omitted the reference to Gallinger Municipal Hospital (now known as the "District of Columbia General Hospital").

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Health Department and Glenn Dale Sanatorium and transferred their positions and functions to the new department. It further provided that within the department the Glenn

Dale Hospital performs all of the functions previously performed by Glenn Dale Sanatorium. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 6-119a. Removal of persons believed to be carriers.

NOTES TO DECISIONS

HABEAS CORPUS

Habeas corpus was available to relator, being detained in hospital section of jail on grounds that he would endanger health if left at large, to test the place of detention. *Francis A. Benton v. Curtis Reid* (1956, 98 U. S. App. D. C. 27, 231 F. 2d 780).

Where relator was incorrectly denied habeas corpus to secure his release from detention in hospital section of District of Columbia Jail as a person who would endanger public health if left at large, Court of Appeals would remand case with directions to issue the writ and discharge relator from the custody of jail, without prejudice to District of Columbia's right to transfer relator to a hospital or other proper place of detention. *Id.*

§ 6-119b. Authority for detention—Expiration of order—Hearing—Minors.

NOTES TO DECISIONS

CONGRESSIONAL INTENT

In the absence of specific language, Court of Appeals would not infer that Congress intended to enact a statute providing that a person who would endanger public health if left at large but who was neither indicted for nor convicted of any crime could be confined in a penal institution to suffer the social stigma and bad associations resulting therefrom. *Francis A. Benton v. Curtis Reid* (1956, 98 U. S. App. D. C. 27, 231 F. 2d 780).

CONSTITUTIONALITY

It was duty of Court of Appeals in interpreting statute authorizing Director of Public Health to designate a place for detention of persons who would endanger public health if left at large, to avoid doubts as to constitutional validity of such statute. *Francis A. Benton v. Curtis Reid* (1956, 98 U. S. App. D. C. 27, 231 F. 2d 780).

PLACE OF DETENTION

Statute authorizing Director of Public Health to designate as a place for detention of a person who would endanger public health if left at large, any place or institution in the District did not authorize detention of such a person in a place of imprisonment or a jail. *Francis A. Benton v. Curtis Reid* (1956, 98 U. S. App. D. C. 27, 231 F. 2d 780).

Chapter 3.—VITAL STATISTICS

§ 6-301 [20: 1001]. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations.

(a) Any physician or midwife who attends at the birth of any child within the District of Columbia, and any person whosoever who, in the absence of a physician or midwife, performs any of the offices usually rendered by such shall execute or cause to be executed and shall file with the health officer of said District not later than the Saturday first ensuing

after the expiration of three secular days immediately following the date of such birth a proper report thereof, written in ink, on a blank furnished by said health officer, embodying all such data as may be necessary for the purposes of the Bureau of the Census of the Department of Commerce, and such other data, if any, as the commissioners of said District deem needful. So far as relates to any data aforesaid not based upon the personal observation of the physician, midwife, or other person by whom report is made, every such report shall show the name and address of the informant and the relationship of said informant to the child born: *Provided, however*, That if the child born be illegitimate it shall in no case be necessary for any physician, midwife, or other person to indicate on any report required by sections 6-301 and 6-302 any fact or facts whereby the identity of the father or of the mother or of the child born will be disclosed: *And provided further*, That no report need be made of stillbirths when the fetus delivered has apparently not passed the fifth month of utero-gestation.

Upon receipt of any report aforesaid, said health officer shall forward to the father of the child, or, if his address be unknown, to the mother, an acknowledgment of the receipt of such report, and if the infant delivered be not stillborn, and such report does not contain the given name of the child born, a blank form on which the father or mother may certify over his or her signature the name of such child, which form, if thus executed and returned to said health officer within three months next following the date of birth, shall be a part of the official record of such birth.

(b) The Commissioners of the District of Columbia are hereby authorized and empowered to adopt rules and regulations governing the filing of reports of births and the issuance of delayed birth registration certificates, in those cases where certificates of birth have not been recorded pursuant to subsection (a) of this section. (Mar. 1, 1907, 34 Stat. 1010, ch. 2280, § 1; July 2, 1956, 70 Stat. 487, ch. 498, § 1.)

CROSS REFERENCES

Duty of health officer to secure full and correct record of vital statistics, § 6-102.

Report and records of adoption proceedings, § 16-204.

AMENDMENTS

1956—The act of July 2, 1956, cited to text, amended the section by designating the existing section as (a) and by adding a new subsection designated (b) as above set out.

NOTES TO DECISIONS

ILLEGITIMACY PROCEEDINGS

In illegitimacy proceeding, birth certificate in which attending physician reported that name of father was unknown and that mother was physician's informant was not competent to show paternity, but certificate did indicate that mother, who testified as to father's identity, had informed physician that father's name was unknown, and hence certificate should have been admitted as bearing on mother's credibility, and its exclusion was reversible error. *Grant Lee v. District of Columbia* (D. C. Mun. App. 1955, 117 A. 2d 922).

PREVIOUS INCONSISTENT STATEMENT

In illegitimacy proceeding, mother is not bound by a previous inconsistent statement as to father's identity,

even though given to physician legally required to make official report, and she may explain why she made previous statement, and whether her explanation is satisfactory is question for trier of facts. *Grant Lee v. District of Columbia* (D. C. Mun. App. 1955, 117 A. 2d 922).

Chapter 4.—DRAINAGE OF LOTS

§ 6-401 [20:1311]. Buildings to be connected with water mains and lots drained into public sewers.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated April 3, 1953 established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the appendix to Title 1.

See also Reorganization Order No. 55 relating to the Department of Licenses and Inspections, and Reorganization Order No. 57 relating to the Department of Public Health which are set out in the appendix to Title 1.

NOTES TO DECISIONS

FRAUD

Where purchaser asked vendor particularly about wiring and plumbing in house and vendor replied that it was all right but said nothing about fact that plumbing was connected to septic tank rather than to public sewer, vendor's conduct would give purchaser right of action for deceit on part of vendor, when failure to disclose fact was considered in connection with code sections requiring connection to be made with public sewers. *Kraft et al. v. Lowe et al.* (D. C. Mun. App. 1950, 77 A. 2d 554).

§ 6-402 [20:1312]. Notice to connect with water mains and sewers to be given by Commissioners.

TRANSFER OF FUNCTIONS

See note under section 6-401 concerning the reorganization of the Department of Sanitary Engineering.

NOTES TO DECISIONS

BREACH OF CONTRACT

Where sewer was available in 1939, but no notice was given by District to connect to sewer until October 1946, purchasers to whom home was conveyed in 1943 would have no right of action against vendors for breach of contract provision requiring vendors to comply with all notices of violations against or affecting property at date of settlement. *Kraft et al. v. Lowe et al.* (D. C. Mun. App. 1950, 77 A. 2d 554).

Chapter 5.—GARBAGE

§ 6-501 [20:1291]. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.

TRANSFER OF FUNCTIONS

See note under section 6-401 concerning the Department of Sanitary Engineering.

Chapter 7.—PRIVIES

§ 6-701. Water closets required where public sewer and water available.

TRANSFER OF FUNCTIONS

See note under section 6-401 concerning the reorganization of the Department of Sanitary Engineering.

NOTES TO DECISIONS

FRAUD BY VENDOR

Where purchaser asked vendor particularly about wiring and plumbing in house and vendor replied that it was all right but said nothing about fact that plumbing was connected to septic tank rather than to public sewer, vendor's conduct would give purchaser right of action for deceit on part of vendor, when failure to disclose fact was considered in connection with code sections requiring connection to be made with public sewers. *Kraft et al. v. Lowe et al.* (D. C. Mun. App. 1950, 77 A. 2d 554).

Chapter 10.—BLACK-OUTS IN WAR TIME

§ 6-1001. Commissioners authorized to order black-outs—Regulations.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by the National Security Act of 1947, act of July 26, 1947, ch. 343, Title II, § 205, 61 Stat. 501.

§ 6-1003. Secretary of War to assist and cooperate.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by the National Security Act of 1947, act of July 26, 1947, ch. 343, Title II, § 205, 61 Stat. 501.

§ 6-1008. Evacuation from District during war.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

§ 6-1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

TRANSFER OF FUNCTIONS

See the note under section 6-1202 concerning the Office of Civil Defense and the Citizens' Civil Defense Advisory Council.

Chapter 12.—OFFICE OF CIVIL DEFENSE

Sec.

6-1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

6-1202b. Same; definition.

6-1207. Interstate civil defense compacts.

§ 6-1202. Office of civil defense authorized—Director and other personnel—Compensation.

TRANSFER OF FUNCTIONS

Reorganization Order No. 45 of the Board of Commissioners dated June 26, 1953, and as amended October 22, 1953, established under the Board of Commissioners, a Citizens' Civil Defense Advisory Council to advise and consult with the Board and the Director of Civil Defense on matters of basic civil defense policies. The order describes the purposes and functions of the new Council, and abolished the previous Civil Defense Advisory Council.

Reorganization Order No. 49 and as amended November 10, 1953, established under the supervision and control of a Commissioner, an Office of Civil Defense headed by a Director. The order set forth the purpose, organization, and functions of the new Office of Civil Defense. The previous Office of Civil Defense was abolished and its functions and positions together with all personnel, property, records, and unexpended funds relating to those functions and positions were transferred to the new Office of Civil Defense. These orders were issued pursuant to

Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 6-1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

The Commissioners of the District of Columbia are authorized to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in any office or agency of the government of the District of Columbia, to which office or agency there may be transferred the functions of the Office of Civil Defense (authorized to be abolished by Reorganization Plan Number 5 of 1952), with the salary provided by law for such position, chargeable to the appropriation for the newly established office or agency: *Provided*, That during the tenure of his appointment such member so appointed shall be deemed to be a member of such Metropolitan Police Department or such Fire Department, as the case may be, for all purposes of rank, seniority, allowances, privileges and benefits, including retirement and disability benefits under the provisions of section 12 of the Act approved September 1, 1916 (39 Stat. 718-721), as amended, to the same extent as though the appointment had not been made, and at the termination of such appointment he shall be entitled to resume his status within the Metropolitan Police Department or Fire Department, as the case may be, which shall include any promotion in rank to which he may have become entitled: *Provided further*, That retirement and disability benefits and salary deductions shall be based on the salary of the rank or position held in the Metropolitan Police Department or the Fire Department, as the case may be, prior to his appointment to such position in such office or agency succeeding to the functions of the Office of Civil Defense or the salary of the position or rank he would have attained in the Metropolitan Police Department or the Fire Department had his appointment to such position in such office or agency not been made, whichever is greater. (May 21, 1951, 65 Stat. 44, ch. 102; July 6, 1953, 67 Stat. 139, ch. 179, § 1.)

AMENDMENTS

1953—Act of July 6, 1953, amends the section so as to permit the Commissioners to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in any office or agency of the District of Columbia to which the functions of the abolished Office of Civil Defense may be transferred. (The Office of Civil Defense was abolished pursuant to Reorganization Plan No. 5 of 1952.)

EFFECTIVE DATE OF AMENDMENT

Section 2 of act of July 6, 1953, provided:

"This Act shall take effect at such time as the Commissioners of the District of Columbia shall transfer the functions of the Office of Civil Defense of the District of Columbia to a newly established Office of Civil Defense or any other office or agency, pursuant to Reorganization Plan Number 5 of 1952."

REFERENCE TO REORGANIZATION PLAN

Reorganization Plan No. 5 of 1952 provides for the abolition of the Office of Civil Defense and the Office of the Director of Civil Defense by not later than June 30, 1953. The act of July 6, 1953, in amending the law of

May 21, 1951 which allowed the Commissioners to appoint a member to the Police or Fire Departments as Director of Civil Defense, permits the Commissioners to continue the present Director of the Office of Civil Defense in a position in any new agency of the District government which may take over the functions of the abolished Office of Civil Defense. Without this further legislation the Commissioners would be without authority to do so under the terms of the act of May 21, 1951, law.

REFERENCES IN TEXT

Sec. 12 of the act of Sept. 1, 1916, is set out in §§ 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506, 4-507, 4-508, 4-509, 4-510, 4-512, 4-513, 4-514, and 11-625.

§ 6-1202b. Same; definition.

As used in section 6-1202a the terms "Metropolitan Police Department" and "Fire Department" shall include, respectively, offices or agencies succeeding to the functions of such departments pursuant to Reorganization Plan Number 5 of 1952. (July 6, 1953, 67 Stat. 140, ch. 179, § 1.)

CROSS REFERENCE

Reorganization Plan No. 5 of 1952 is set out in the appendix to Title 1.

§ 6-1207. Interstate civil defense compacts.

(a) The Commissioners of the District of Columbia are authorized to enter into and execute on behalf of the District of Columbia interstate civil-defense compacts with the States, substantially in the form set forth in the note following this section. The form of compact set forth in the note following this section may include, in lieu of the second sentence of article 3 thereof, the following: "Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as are extended to the civil-defense forces of such State."

(b) Notwithstanding the provisions of sections 2251 to 2263, 2271, 2272, 2281 to 2284 and 2291 to 2297 of Title 50 Appendix, U. S. Code, the consent of Congress is hereby granted to each compact entered into by the District of Columbia with any State pursuant to the provisions of this section.

(c) Whenever any such compact becomes operative by ratification of the parties thereto, such compact shall have the force and effect of law.

(d) As used in this section the word "State" includes the Territories and possessions of the United States and the District of Columbia and with respect to the District of Columbia the word "Governor" means the Commissioners of the District of Columbia. (Apr. 22, 1954, 68 Stat. 62, ch. 172, §§ 1, 2, 3, 4.)

FORM OF INTERSTATE COMPACT

The preamble to the act of April 22, 1954, contained the following form:

"INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

"The contracting States solemnly agree:

"Article 1. The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of

the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care, and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil-defense agencies or similar bodies of the States that are parties hereto. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

"Article 2. It shall be the duty of each party State to formulate civil-defense plans and programs for application within such State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any material and equipment available for civil defense. In carrying out such civil-defense plans and programs the party States shall so far as possible provide and follow uniform standards, practices, and rules and regulations including—

"(a) Insignia, arm bands, and any other distinctive articles to designate and distinguish the different civil-defense services;

"(b) Blackouts and practice blackouts, air-raid drills, mobilization of civil-defense forces, and other tests and exercises;

"(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

"(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

"(e) Shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

"(f) All materials or equipment used or to be used for civil-defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party State;

"(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

"(h) The safety of public meetings or gatherings; and

"(i) Mobile support units.

"Article 3. Any party State requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: provided, that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for such State. Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil-defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil-defense authorities of the State receiving assistance.

"Article 4. Whenever any person holds a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party State to meet an emergency or disaster and such State shall give due recognition to such license, certificate, or other permit as if issued in the State in which aid is rendered.

"Article 5. No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

"Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among

other States party hereto, this instrument contains elements of a broad base common to all States, and nothing herein contained shall preclude any State from entering into supplementary agreements with another State or States. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies.

"Article 7. Each party State shall provide for the payment of compensation and death benefits to injured members of the civil-defense forces of that State and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

"Article 8. Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party State without charge or cost; and provided further, that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party State receiving aid from any liability and reimburse the party State supplying civil-defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

"Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil-defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care and like items. Such expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government, under plans approved by it. After the termination of the emergency or disaster the party State of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

"Article 10. This compact shall be available to any State, territory, or possession of the United States, and the District of Columbia. The term 'State' may also include any neighboring foreign country or province or state thereof.

"Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

"Article 12. This compact shall become operative immediately upon its ratification by any State as between it and any other State or States so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agree-

ments as may be entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

"Article 13. This compact shall continue in force and remain binding on each party State until the legislature or the Governor of such party State takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

"Article 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby."

Chapter 13.—CANCER AND MALIGNANT NEOPLASTIC DISEASES

Sec.

6-1301. Commissioners authorized to promulgate regulations requiring reports.

6-1302. Reports to be confidential—exceptions.

6-1303. Persons not compelled to submit to medical examination or treatment.

6-1304. Penalties for violations.

§ 6-1301. Commissioners authorized to promulgate regulations requiring reports.

The Commissioners of the District of Columbia are authorized to promulgate regulations requiring that cancer, sarcoma, lymphoma (including Hodgkin's disease), leukemia, and all other malignant growths be reported to the director of public health of the District of Columbia. (July 27, 1951, 65 Stat. 124, ch. 241, § 1.)

§ 6-1302. Reports to be confidential—Exceptions.

The reports of cases made pursuant to the provisions of regulations promulgated under this chapter shall be confidential and not open to public inspection. The information in such reports shall not be divulged or made public so as to disclose the identity of any person to whom they may relate, except upon order of court, and unless already published shall be divulged or made public only on the written authorization of the director of public health. (July 27, 1951, 65 Stat. 124, ch. 241, § 2.)

§ 6-1303. Persons not compelled to submit to medical examination or treatment.

Nothing in this chapter, or regulations promulgated thereunder, shall be construed to compel any person suffering from any of the diseases listed in section 6-1301 to submit to medical examination or treatment. (July 27, 1951, 65 Stat. 124, ch. 241, § 3.)

§ 6-1304. Penalties for violations.

The said Commissioners are authorized to prescribe a reasonable penalty or fine, not to exceed \$100, for the violation of any regulation promulgated under the authority of this chapter, and all prosecutions for violations of such regulations shall be in the criminal branch of the municipal court for the District of Columbia in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. (July 27, 1951, 65 Stat. 124, ch. 241, § 4.)

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chapter 1.—HIGHWAY PLANS

Sec.

7-132. District of Columbia Highway Construction program.

7-133. Loans for the District of Columbia highway construction program—Availability—Repayment—Interest—Budget estimates.

§ 7-101 [12:1]. Commissioners to have control of streets—Power to make regulations for repairs.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated April 3, 1953 established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new Department of Sanitary Engineering. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Reorganization Order No. 53 established under the direction and control of the Engineer Commissioner, a Department of Highways, headed by a Director. The Department of Highways was established to perform highway services and operations for the District including the planning, design, engineering, operation, maintenance and repair of highway and bridge facilities. The order sets out the purposes and organization of the new department. The order abolished the previously existing Department of Highways, the Street Division, the Bridge Division, the Electrical Division, the Trees and Parking Division and the Central Garage and Shops; and transferred all of their functions and positions to the new Department of Highways. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 7-102 [12:2]. Commissioners to have jurisdiction over public roads and bridges—Exceptions.

TRANSFER OF FUNCTIONS

See note under section 7-101 concerning the Department of Highways.

NOTES TO DECISIONS

CARE OF SIDEWALK

Where a sidewalk belonged to the United States, and it was not sufficiently shown to the court as a matter of law on motion for summary judgment in a personal injury action against the United States and the District of Columbia, that the walk was not also under the care of the United States, the United States was not entitled to summary judgment on theory that District of Columbia had sole responsibility for the sidewalk. *M. C. Leary v. District of Columbia* (1958, 166 F. Supp. 542).

§ 7-107 [12:6]. Commissioners to name streets outside of city limits.

CHANGES IN STREET NAMES BY CONGRESS

FLOYD B. OLSON MEMORIAL TRIANGLE

The triangle bounded by Connecticut Avenue, Q Street, and Twentieth Street in the District of Columbia is hereby designated the Floyd B. Olson Memorial Triangle in memory of the late Floyd B. Olson, former Governor of the State of Minnesota, and the surveyor of the District of Columbia is directed to enter such designation

on the records of his office. (June 4, 1952, 66 Stat. 99, ch. 364, § 1.)

§ 7-108 [12:7]. Permanent highway plan—Preparation by Commissioners—Width of streets.

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see section 1-1006.

TRANSFER OF FUNCTIONS

See note under section 7-101 concerning the Department of Highways.

§ 7-109 [12:8]. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Park and Planning Commission—Recordation—Landowners to submit plat of proposed highways.

TRANSFER OF FUNCTIONS

See section 1-1009 which transfers functions, powers and duties of the National Park and Planning Commission, including those formerly vested in the Highway Commission and the National Capital Park Commission, to the National Capital Planning Commission.

§ 7-110 [12:9]. Adoption of subdivision by reference in will or deed.

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see section 1-1006.

§ 7-111 [12:10]. Entry upon property authorized for purposes of survey.

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see section 1-1006.

§ 7-112 [12:11]. Commissioners authorized to name streets.

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see section 1-1006.

§ 7-132. District of Columbia highway construction program.

A program of construction projects to meet immediate capital needs for highways in the District is hereby authorized. (May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 401.)

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 7-133. Loans for the District of Columbia highway construction program—Availability—Repayment—Interest—Budget estimates.

(a) To assist in financing such program of construction, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided*, That the total principal amount of loans ad-

vanced pursuant to this section shall not exceed \$50,250,000: *Provided, further*, That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District for such fiscal year, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further*, That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in sections 1-1001 to 1-1013. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the Highway Fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Highway Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Highway Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners and shall be payable from the Highway Fund. (May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 402.)

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

Chapter 2.—LAND FOR STREETS

Sec.

7-213a. Compensation of jurors in eminent domain cases.

§ 7-201 [25: 51]. Commissioners may open, extend, or widen streets, avenues, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

CROSS REFERENCE

For authority of Commissioners to use squares 354 and 355 and certain water frontage for Southwest Freeway

and redevelopment of Southwest area, see act of August 28, 1958, Pub. L. 85-821.

§ 7-213 [25: 63]. Repealed. July 30, 1951, effective July 30, 1951, 65 Stat. 126, ch. 248, § 1.

Section relating to compensation of jurors in eminent domain cases now covered by § 7-213a.

§ 7-213a. Compensation of jurors in eminent domain cases.

In all eminent domain cases instituted by or on behalf of the District of Columbia, each juror shall receive as compensation for his services the sum of \$10 per day for every day necessarily employed in the performance of his duties. (July 30, 1951, 65 Stat. 126, ch. 248, § 2.)

Chapter 3.—ALLEYS AND MINOR STREETS

§ 7-301 [25: 72]. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.

NOTES TO DECISIONS

VOLUNTARY DEDICATION

Statute authorizing Commissioners of the District of Columbia to open, extend, widen, or straighten alleys and minor streets subject to certain conditions has no application to a voluntary dedication of realty accepted by the commissioners under authority of law for the widening of an alley. *Barnard et al. v. The Commissioners of the District of Columbia* (1957, 100 U. S. App. D. C. 404, 246 F. 2d 685).

§ 7-303 [25: 74]. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

NOTES TO DECISIONS

"AUTHORITY TO ACCEPT DEDICATION OF ALLEY," CONSTRUED

The quoted words in statute providing that "The said commissioners are authorized to accept the dedication of an alley or alleys" and in connection therewith to close any existing alley or alleys in the square or block in which such dedication is made "upon the application of the owners of all the property abutting on such existing alley or alleys," are not to be read as subject to the phrase "upon the application of the owners of all the property abutting on such existing alley or alleys." *Barnard et al. v. The Commissioners of the District of Columbia* (1957, 100 U. S. App. D. C. 404, 246 F. 2d 685).

AUTHORITY TO ACCEPT LAND FOR WIDENING OF ALLEY

Commissioners of the District of Columbia were authorized to accept from owner certain realty for the widening of an alley though owners of property abutting on the other side of the alley in question objected to the widening of the alley. *Barnard et al. v. The Commissioners of the District of Columbia* (1957, 100 U. S. App. D. C. 404, 246 F. 2d 685).

BUILDING PERMITS

Where building permits granted by Commissioners of the District of Columbia were for lots abutting a portion of alley which, after acceptance of dedication of realty for widening of the alley, was 30 feet wide and with such width, extended to and opened on a street, the granting of the permits was not contrary to Zoning Commission's regulations providing that no dwelling or other building to be used for habitation shall be erected on an alley lot unless portion of alley abutting such lot is 30 or more feet in width and, with such width, extends to and opens on a street. *Barnard et al. v. The Commissioners of the District of Columbia* (1957, 100 U. S. App. D. C. 404, 246 F. 2d 685).

§ 7-322 [25: 89]. Repealed. July 30, 1951, effective July 30, 1951, 65 Stat. 126, ch. 248, § 1.

Section relating to compensation of jurors in eminent domain cases now covered by § 7-213a.

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

§ 7-501 [12: 51]. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.

TRANSFER OF FUNCTIONS

See note under section 7-101 concerning the Department of Highways, and the Department of Sanitary Engineering.

Chapter 6.—REPAIR AND CONSTRUCTION

Sec.

7-604a. Removal of street railway tracks—Provision for paving.

§ 7-601 [12: 71]. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.

TRANSFER OF FUNCTIONS

See note under section 7-101 concerning the Department of Highways.

§ 7-603 [12: 73]. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the District of Columbia shall be required (except when otherwise provided by section 1-805) from the contractors in a penal sum of not less than twenty-five per centum of the amount of the contract with sureties or a surety company to be approved by the Commissioners of the District of Columbia guaranteeing that the terms of the contract shall be strictly and faithfully performed to the satisfaction of said commissioners; that the contractors shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contracts; and that such work shall be kept in repair for a period of one year from the date of completion of said work; and where repairs are necessary during the four years following the said one year period due to inferior work or defective materials, such repairs shall be made at the expense of the contractor, and the bond furnished by the contractor shall be liable for such expense. (As amended Aug. 3, 1951, 65 Stat. 166, ch. 292, § 1.)

COMPILER'S NOTE

This provision, similar to those previously enacted respecting repairs necessary over a five-year period due to inferior work and defective materials, was repeated in the act of Aug. 3, 1951, except the last clause reading: "but no cash retent to guarantee such repair shall be held or required on such contracts.", which was not reenacted.

REPEATED

Act August 6, 1958, 72 Stat. 509, Pub. L. 85-594, § 1.
Act June 27, 1957, 71 Stat. 204, Pub. L. 85-61, § 1.
Act June 29, 1956, 70 Stat. 451, ch. 479, § 1.
Act July 5, 1955, 69 Stat. 259, ch. 272, § 1.
Act July 1, 1954, 68 Stat. 372, ch. 449, § 1.
Act July 31, 1953, 67 Stat. 290, ch. 299, § 1.
Act July 5, 1952, 66 Stat. 385, ch. 576, § 1.

§ 7-604 [12:74]. Payments—Railway companies to pay portion of cost—Penalty for refusal.

The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: The United States shall pay one-half of the cost of all work done under the provisions of this section, except as hereinafter provided, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times they may deem safe and proper in view of the progress of the work: *Provided*, That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges: *Provided further*, That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right of way occupied by its tracks as provided by section 7-612; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

REFERENCE IN TEXT

Capital Transit Company, referred to in the text has now been succeeded by the D. C. Transit Company.

COMPILERS' NOTE

This section was recompiled following the decision of the Court, in *Fisher v. Capital Transit Corp.* (1957, 100 U. S. App. D. C. 385, 246 F. 2d 666). The original text of the sections of the law from which the above section was recompiled reads as follows:

The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street-railway runs shall be paved, such railway company shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair; but the said railway companies, having conformed to the grades established by the Commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the Commissioners may direct; the United States shall pay one-half of the cost of all work done under the provisions of this section, except that done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times they may deem safe and proper in view of the progress of the work: That if any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. (Portion of section 5, act June 11, 1878, 20 Stat. 106, ch. 180.)

That all provisions of law making it incumbent upon any street railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided*, That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges:

Provided further, That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right of way occupied by its tracks as provided by section 8 of the Act of Congress entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916, as amended to date. (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

NOTES TO DECISIONS

DUTY OF TRANSIT COMPANY TO REPAIR TRACKS

Transit Company in the District of Columbia owed no duty to pedestrians to inspect, maintain, and repair its tracks and, therefore, was not liable for personal injuries sustained by pedestrian who, while crossing street, fell when he caught his foot in hole located in or near street-car tracks or for resulting loss of consortium to pedestrian's wife. *Fisher v. Capital Transit Co.* (1957, 100 U. S. App. D. C. 385, 246 F. 2d 666).

Congress, in authorizing formulation of the Capital Transit Company in the District of Columbia, intended to impose only ultimate financial cost, as distinguished from legal duty of street maintenance, upon the company. *Id.*

§ 7-604a. Removal of street railway tracks—Provision for paving.

Hereafter when any Capital Transit Company street railway operation shall have been ordered abandoned by the Public Utilities Commission of the District of Columbia and the Commissioners of the District of Columbia shall have ordered the removal of abandoned tracks, the Capital Transit Company shall pay the entire cost of removing such abandoned tracks and regarding the track area, and, if the street or bridge in which the said tracks have been ordered abandoned is not being paved, the Capital Transit Company shall pay the entire cost of paving the abandoned track areas, which cost, however, shall not exceed the cost of repaving such abandoned track areas with the type, character, and thickness of the paving of the adjacent roadway left in place, and, if the roadway of the street or bridge is being paved at the time of removal of said abandoned tracks, the Capital Transit Company shall pay one-half of the actual cost of paving the abandoned track areas, irrespective of whether the paving is of the type, character, and thickness as that existing at the time of said removal. The Commissioners of the District are authorized to settle in conformity with the principles herein set forth, any claims it now has, or in the future may have, for the paving of abandoned track areas, upon such terms and conditions as to time of payment or payments as the Commissioners may determine. (July 1, 1941, 55 Stat. 533, ch. 271.)

§ 7-614. Repealed. August 15, 1956, 70 Stat. 602, ch. 669, § 10 (b).

Chapter 8.—REMOVAL OF SNOW AND ICE

§ 7-801 [19: 71]. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.

NOTES TO DECISIONS

DISCRETION OF TRIAL JUDGE

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of

conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

DISTRICT'S LIABILITY FOR DANGEROUS SIDEWALK ON FEDERAL PROPERTY

Even though the Snow Removal Act makes it duty of Director of National Park Service to remove snow and ice from sidewalks in front of or around reservation owned by United States and even though the sidewalk on which plaintiff fell was part of public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was nevertheless liable for pedestrian's injuries in fall due to dangerous and unusual sidewalk formations of snow and ice of which District had actual or constructive notice for a reasonable period of time. *Campbell v. District of Columbia* (1957, 153 F. Supp. 730).

ESSENTIAL ELEMENTS FOR RECOVERY

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had actual or constructive notice of particular condition and reasonable period of time in which to remove formations so as to make sidewalk reasonably safe for travel. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

EXTENT OF CLEARANCE

Under the statute making it the duty of person controlling building fronting on sidewalk to remove snow from so much of walk as in front of building, clearing snow from about half width of sidewalk after heavy snowfall was sufficient. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

LIABILITY

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

SUFFICIENCY OF EVIDENCE

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

§ 7-802 [19: 71]. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.

Reorganization Order No. 28 of the Board of Commissioners dated April 3, 1953, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including the collection of waste material and including snow removal. The office of Water Registrar and the previously existing Department

of Sanitary Engineering were abolished and their functions transferred to the new department. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

DISCRETION OF TRIAL JUDGE

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

DISTRICT'S LIABILITY FOR DANGEROUS SIDEWALK ON FEDERAL PROPERTY

Even though the Snow Removal Act makes it duty of Director of National Park Service to remove snow and ice from sidewalks in front of or around reservation owned by United States and even though the sidewalk on which plaintiff fell was part of public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was nevertheless liable for pedestrian's injuries in fall due to dangerous and unusual sidewalk formations of snow and ice of which District had actual or constructive notice for a reasonable period of time. *Campbell v. District of Columbia* (1957, 153 F. Supp. 730).

EFFECT OF APPELLATE COURTS DECISION ON RETRIAL

Where Court of Appeals found, in action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk in front of one of the Municipal Court buildings, that there was sufficient evidence for jury to find that District had notice of condition of sidewalk, apart from statute which makes it duty of District to remove ice from sidewalks adjacent to its buildings, question of notice would not be considered on motion for judgment notwithstanding verdict in second trial, where-in evidence was substantially the same, even if Court of Appeals had erred factually in finding that sidewalk was adjacent to building owned or controlled by District rather than adjacent to federal reservation owned by United States. *Campbell v. District of Columbia* (1957, 153 F. Supp. 730).

ESSENTIAL ELEMENTS FOR RECOVERY

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had reasonable period of time in which to remove formations actual or constructive notice of particular condition and so as to make sidewalk reasonably safe for travel. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

EVIDENCE

In pedestrian's suit against District of Columbia for injuries sustained when she slipped on ice and snow on sidewalk running in front of building under control of District, in view of fact that pedestrian failed to offer evidence of conditions naturally prevailing on sidewalks anywhere in city at time, she could not successfully complain on appeal of trial court's ruling that such evidence had to relate to radius of one block from locale of accident.

Campbell v. District of Columbia (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

INSTRUCTIONS

In action against District of Columbia for injuries sustained by pedestrian in fall on icy sidewalk running in front of building controlled by District, court committed prejudicial error in failing to charge substance of pedestrian's requested instruction that, if jury found that icy condition had existed such time that District had actual or constructive notice thereof, liability for negligence could be imposed for failing to treat the previously dangerous condition, though new snow and sleet had aggravated it, though tendered instruction was required to be modified slightly. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

INSTRUCTIONS TO JURY

Where District of Columbia opposed instruction on statute, which makes it duty of District to remove ice from sidewalk, District withdrew instruction prepared on assumption that it would call witnesses to show that efforts had been made to cope with snow storm, and after withdrawal of pedestrian's requested instruction, District did not ask to reopen case for purposes of calling witnesses, and there was no basis for belief that such request would have been denied, District was not entitled to new trial on ground that it was unaware that statute would not be element in case until it was too late for it to call its witnesses. *Campbell v. District of Columbia* (1957, 153 F. Supp. 730).

LIABILITY

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

NOTICE

If District of Columbia has notice of dangerous icy condition on sidewalk adjacent to building which it maintains, it may be liable for negligence to one injured because of such condition, though new snow and sleet had aggravated the condition. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

REASONABLY SAFE

Under statute requiring Commissioners of the District of Columbia within first eight hours after daylight after ceasing of any fall of snow or sleet to clear sidewalks so as to make them reasonably safe, District does not have to render condition absolutely harmless. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

SUFFICIENCY OF EVIDENCE

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

§ 7-803 [19:73]. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

NOTES TO DECISIONS

DISTRICT'S LIABILITY FOR DANGEROUS SIDEWALK ON FEDERAL PROPERTY

Even though the Snow Removal Act makes it duty of Director of National Park Service to remove snow and ice from sidewalks in front of or around reservation owned by United States and even though the sidewalk on which plaintiff fell was part of public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was

nevertheless liable for pedestrian's injuries in fall due to dangerous and unusual sidewalk formations of snow and ice of which District had actual or constructive notice for a reasonable period of time. *Campbell v. District of Columbia* (1957, 153 F. Supp. 730).

RESPONSIBILITY FOR REMOVAL

Snow Removal Act does not shift responsibility for removal of snow from streets and sidewalks adjacent to federal property from District of Columbia to Director of National Park Service in such sense as to bar a suit against District for personal injuries sustained by pedestrian in fall on slippery sidewalk. *District of Columbia v. A. F. Campbell* (1958, 103 U. S. App. D. C. 20, 254 F. 2d 357).

§ 7-804 [19:74]. Temporary use of sand and ashes.

NOTES TO DECISIONS

DISCRETION OF TRIAL JUDGE

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

ESSENTIAL ELEMENTS FOR RECOVERY

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had actual or constructive notice of particular condition and reasonable period of time in which to remove formations so as to make sidewalk reasonably safe for travel. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

LIABILITY

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

SUFFICIENCY OF EVIDENCE

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell v. District of Columbia* (1957, 100 U. S. App. D. C. 120, 243 F. 2d 226).

§ 7-805 [19:75]. Removal by Commissioners upon default by owner or occupant—Expense.

NOTES TO DECISIONS

LIABILITY

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

§ 7-806 [19:76]. Suit for recovery of cost.

NOTES TO DECISIONS

LIABILITY

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith v. District of Columbia* (1951, 89 U. S. App. D. C. 7, 189 F. 2d 671).

Chapter 9.—RENTAL OF VAULTS UNDER SIDEWALKS

§ 7-901 [25:411]. Authority conferred on Commissioners.

The Commissioners of the District of Columbia are authorized and directed to assess and collect rent from all users of space occupied under the sidewalks and streets in the District of Columbia, which said space is occupied or used in connection with the business of said users, and such rent shall be deposited to the credit of the Highway Fund. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 7; May 18, 1954, 68 Stat. 110, ch. 218, § 501.)

AMENDMENTS

1954—The act of May 18, 1954, added the words “and such rent shall be deposited to the credit of the Highway Fund” to the end of the section.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

Chapter 12.—MISCELLANEOUS

§ 7-1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.

Any and all streets or highways within the District of Columbia now or hereafter planned or projected to cross any line of railroad, other than a street railway, in the District of Columbia, which may be hereafter opened to public use, shall be located, constructed, and maintained either beneath such railroad by a suitable subway, or above the same by a suitable viaduct bridge at such altitude as will not interfere with the free and safe operation thereof: *Provided, however,* That nothing herein contained shall require the location, construction, or maintenance of any such street or highway under or above any spur, industrial, switching or side track, or branch line of any railroad unless the Commissioners of the District of Columbia shall find the same is necessary in the public safety.

The cost and expense of any project for opening any such street or highway within the limits of such railroad company's right-of-way, including the cost of constructing the portion of any viaduct bridge, within said limits, shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of such cost and expense all Federal aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programed and all such funds which become available for use on such projects by the District of Columbia during the construction of such project:

(2) If such Federal aid highway-railway grade separation funds are insufficient to pay the cost and expense of any such project, the portion not so

covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: *Provided,* That in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost and expense of such project;

(3) After construction, the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed; and

(4) The portions of such streets planned or projected as above which lie within a right-of-way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right-of-way have been similarly dedicated or otherwise acquired. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1; July 25, 1956, 70 Stat. 638, ch. 720, § 1.)

AMENDMENTS

1956—Section 1 of the act of July 25, 1956, cited to text, amended the second sentence of the section to read as above set out.

The act of May 9, 1941, cited to text, added the proviso in the first sentence.

SAVING CLAUSES, ETC.

Sections 2 and 3 of the act of May 9, 1941, cited to text, provided:

Section 2. Congress reserves the right to alter, amend, or repeal this Act.

Section 3. If this amendatory act, or any part thereof, shall be declared invalid, the act of February 28, 1903, as originally enacted shall remain in full force and effect and unimpaired by this amendatory act.

CROSS REFERENCE

See note to Section 7-1210.

§ 7-1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.

(a) The Commissioners of the District of Columbia be, and they are hereby, authorized and directed to construct viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right of way of the Baltimore and Ohio Railroad Company and to construct a viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided,* That one-half of the total cost of constructing the viaduct and approaches thereto at Varnum Street and one-half of the total cost of constructing the viaduct and approaches thereto at Fern Street shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, and that one-half of the total cost of constructing the viaduct and approaches thereto at Eastern Avenue shall be borne and paid by the said Philadelphia, Baltimore and Washington Railroad Company and the said Baltimore and Ohio Railroad Company, their successors and assigns, in proportion to the widths of their

respective land holdings, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the said half cost shall be valid and subsisting liens against the franchises and property of the railroad companies concerned and shall constitute a legal indebtedness against the said railroad companies in favor of the District of Columbia, and said liens may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the Supreme Court of the District of Columbia, or by any other legal proceeding against the said railroad companies: *Provided*, That no street railway company shall use the said viaduct or any approaches thereto herein authorized for its tracks until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section.

(b) For the purpose of carrying into effect the provisions of this section, the sum of \$405,000 is hereby authorized to be appropriated, payable in like manner as other appropriations, for the expenses of the government of the District of Columbia, and the said commissioners are authorized to expend such sum or sums as may be necessary for personal services, engineering, and incidental expenses. The said commissioners are further authorized to acquire, out of the appropriation herein authorized, the necessary land, or any portion of the same, by purchase at such price or prices as in their judgment they may deem reasonable and fair, or, in their discretion, by condemnation in accordance with the provisions of sections 7-202 to 7-215, under a proceeding or proceedings in rem instituted in the Supreme Court of the District of Columbia: *Provided*, That of the entire amount found to be due and awarded by the jury as damages for, and in respect of, the land to be condemned to carry the provisions of this section into effect, plus the costs and expenses of the proceeding or proceedings taken pursuant hereto, not less than one-half thereof shall be assessed by the jury as benefits, the amounts collected as benefits to be covered into the Treasury of the United States to the credit of the District of Columbia.

(c) Hereafter the Commissioners of the District of Columbia are authorized, whenever in their judgment it may be necessary for the public safety, and subject to appropriations to be made therefor by Congress, to construct subways or viaducts and approaches thereto, in accordance with plans and profiles of said works to be approved by them, to carry any street or highway crossing at grade any line of railroad track or tracks in the District of Columbia, or any street or highway within the District of Columbia now or hereafter planned or projected to cross any such line of railroad, under or over said track or tracks: *Provided*, That the total cost of constructing any project for such viaduct or

subway and approaches thereto shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of the cost of such project all Federal aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programed and all such funds which become available for use on such project by the District of Columbia during the construction of such projects; and

(2) If such Federal-aid highway-railway grade separation funds are insufficient to pay the cost of any such project, the portion not so covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: *Provided further*, That in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost of such project: *Provided further*, That in the event the rights-of-way of two or more railroad companies are so crossed said half cost as herein provided shall be paid by the said railroad companies, their successors and assigns, in proportion to the widths of their respective landholdings, but the obligations of such companies shall not, in the aggregate, exceed 10 per centum of the cost of such project: *Provided further*, That after construction the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed: *Provided further*, That in the event the rights-of-way of two or more railroad companies are so crossed, the cost of maintenance shall be borne and paid in the case of highway underpasses by the said railroad companies, their successors and assigns, in proportion to the widths of their respective landholdings. All provisions in respect to the method of payment and credit of said half cost, creation of a lien in respect thereto and enforcement thereof, conditions of use thereof by street railway companies, and every other kind of condition provided in section (a) hereof, and the authorization and every condition in respect thereto for the acquisition of any necessary land provided in subsection (b) hereof, in relation to the viaducts and their approaches therein authorized, are hereby made applicable to the subways, viaducts, and approaches authorized in this section the same as if enacted at length herein. (Mar. 3, 1927, 44 Stat. 1353, ch. 306, §§ 1-3; July 25, 1956, 70 Stat. 639, ch. 720, § 2.)

AMENDMENT

1956—Section 2 (a) of the act of July 25, 1956, cited to text, amended the section by striking out the word "steam".

Section 2 (b) of the act amended the first proviso clause in subsection (c) to read as above set out.

COMPILER'S NOTE

1956—Section 2 (b) of the act of July 25, 1956, cited to text, amended the proviso clause in section 3 of the act of March 3, 1927, to read as now set out in subsection (c). This section as it appears in the 1951 edition of the Code is a composite of sections 1, 2 and 3 of the act of March 3, 1927. In order to give full effect to the amendment it was necessary to set out the full text of the sections.

Chapter 13.—WASHINGTON NATIONAL AIRPORT

§ 7-1302. Powers and duties of Administrator—Rules and regulations.

NOTES TO DECISIONS

ARBITRARY AND CAPRICIOUS CONDUCT

Record on appeal from dismissal of complaint of operator of automobile rental service disclosed prima facie showing that action of Civil Aeronautics Administrator and Director of Washington National Airport in prohibiting such operator from delivering driverless automobiles to customers at airport in any case where paper was to be signed or money was to be paid, even if reservation had been made in advance, was arbitrary and capricious and unrelated to proper administration of airport. *Harry Friend, d/b/a Hertz Driv-Ur-Self System v. Frederick B. Lee, Administrator etc.* (1955, 95 U. S. App. D. C. 224, 221 F. 2d 96).

AUTHORITY OF ADMINISTRATOR

Under statute giving civil aeronautics administrator control over and responsibility for the care, operation, maintenance and protection of airport together with power to make and amend such rules and regulations as he might deem necessary to proper exercise thereof and under statute providing any person who willfully violates any rule or regulation shall be guilty of a misdemeanor, administrator was empowered to establish conduct of citizens on airport or make such conduct a crime against United States and defendant could be prosecuted for using profane language in violation of regulation. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

INSTRUCTIONS TO JURY

In prosecution for using profane language in Washington National Airport contrary to airport regulation, defendant was not entitled to instruction that if profanity was used while resisting a false arrest it was justified. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

POWER OF ADMINISTRATOR QUESTION FOR TRIAL

To what extent Civil Aeronautics Administrator and Director of Washington National Airport might be entitled to prevent use of public address system at airport by operator of automobile rental service was question which should be decided at trial of operator's action for, inter alia, injunction against interference with operator's delivery of driverless automobiles to customers at airport. *Harry Friend, d/b/a Hertz Driv-Ur-Self System v. Frederick B. Lee, Administrator etc.* (1955, 95 U. S. App. D. C. 224, 221 F. 2d 96).

Civil Aeronautics Administrator and Director of Washington National Airport possessed broad powers in relation to automobile and personal traffic at airport, and to use of space. *Id.*

REGULATIONS

Regulation forbidding conduct of business on Washington National Airport without approval of Administrator of Civil Aeronautics or Airport Director was not violated by rent-a-car-system employee, who drove automobile to airport for use of incoming plane passenger, who had placed order for automobile, even though agreement for lease of automobile was signed at airport. *United States v. Emmett Jenkins* (1955, 130 F. Supp. 808).

SUFFICIENCY OF INFORMATION

Information charging that defendant unlawfully and without just cause or excuse used profane language contrary to airport regulation prohibiting use of profane language on airfield was sufficient to state essential elements of crime although the words knowingly and willfully were not used. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

§ 7-1303. Lease of space or property.

NOTES TO DECISIONS

SUPERVISION AND CONTROL

Purpose of regulation forbidding conduct of business on Washington National Airport without approval of Administrator of Civil Aeronautics or Airport Director was intended to give Administrator or Director supervision and control of such mercantile engagements as would require occupancy or space of facilities of airport in a manner more burdensome than, or otherwise different from, that accorded to a passenger. *United States v. Emmett Jenkins* (1955, 130 F. Supp. 808).

§ 7-1305. Penalty for violations.

NOTES TO DECISIONS

AUTHORITY OF ADMINISTRATOR

Under statute giving civil aeronautics administrator control over and responsibility for the care, operation, maintenance and protection of airport together with power to make and amend such rules and regulations as he might deem necessary to proper exercise thereof and under statute providing any person who willfully violates any rule or regulation shall be guilty of a misdemeanor, administrator was empowered to establish conduct of citizens on airport or make such conduct a crime against United States and defendant could be prosecuted for using profane language in violation of regulation. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

INSTRUCTIONS TO JURY

In prosecution for using profane language in Washington National Airport contrary to airport regulation, defendant was not entitled to instruction that if profanity was used while resisting a false arrest it was justified. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

SUFFICIENCY OF INFORMATION

Information charging that defendant unlawfully and without just cause or excuse used profane language contrary to airport regulation prohibiting use of profane language on airfield was sufficient to state essential elements of crime although the words knowingly and willfully were not used. *G. C. Finn v. United States* (1958, — U. S. App. 4th Ct. —, 256 F. 2d 304).

Chapter 14.—PUBLIC AIRPORT

§ 7-1403.—Acquisition and construction of facilities.

NOTES TO DECISIONS

STANDING TO SUE

Where none of plaintiff's land was sought to be condemned, his suit to enjoin taking of property, more than one-half mile distant from his own land, for use as airport, did not present a "justiciable controversy", and his suit was premature. *Jasper v. Sawyer et al.* (1953, 92 U. S. App. D. C. 94, 205 F. 2d 700).

§ 7-1412. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; as amended July 11, 1958, 72 Stat. 354, Pub. L. 85-511, § 1.)

AMENDMENTS

1958—Section 1 of the act of July 11, 1958, cited to text, amended the section to read as above set out so as to remove the limitation on the amount authorized to be appropriated for construction.

TITLE 8.—PARKS AND PLAYGROUNDS

Chapter 1.—PARKS AND PLAYGROUNDS

§ 8-101 [20: 1531]. Transferred.

COMPILER'S NOTE

This section as amended by act of July 19, 1952, is now set out as §§ 1-1001 to 1-1010.

§ 8-102 [20: 1532]. Transferred.

COMPILER'S NOTE

This section and sections 8-106 and 8-107 were renumbered by section 2 of the act of July 19, 1952, and now are set out as sections 1-1011, 1-1012, and 1-1013, respectively.

§ 8-106 [20: 1535]. Transferred.

COMPILER'S NOTE

See note following 8-102.

§ 8-107 [20: 1536]. Transferred.

COMPILER'S NOTE

See note following section 8-102.

§ 8-115 [20: 1540e]. Transfer of jurisdiction over property between United States and District of Columbia.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.

§ 8-116 [20: 1540f]. Transfer of jurisdiction—Existing laws unaffected.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.

§ 8-164 [20: 1578a]. Theodore Roosevelt Island—Acceptance authorized—Maintenance and development.

CHANGE OF NAME

Section 2 of the act of May 21, 1953, 67 Stat. 27, provided that any law heretofore enacted by the Congress and now in effect which refers to the Roosevelt Memorial Association shall be deemed to refer to such Association by its new name, Theodore Roosevelt Association. Section 1 of the act amended the act incorporating the Association so as to effect the change in name to "Theodore Roosevelt Association".

Chapter 2.—RECREATION BOARD

Article I.—Membership of the Recreation Board

§ 8-201. Recreation Board created.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

POLICY RE PLAYGROUNDS

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

§ 8-202. Composition of Board—Qualifications—Tenure.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

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Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

Article II.—Functions and administrative responsibilities of the Board

§ 8-208. Determination of general policy—Supervision of expenditures.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

POLICY RE PLAYGROUNDS

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

§ 8-209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Part-time employees—Compensation—Volunteer services.

* * * * *

Notwithstanding the provision of section 301 of the Federal Employees' Pay Act of 1945, as amended (68 Stat. 1110; 5 U. S. C. 921), requiring regularity in the scheduled work between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian, the Board shall have the power to prescribe rules and regulations governing the payment of night differential for nonregularly scheduled work between such hours by such of its employees as are subject to the Classification Act of 1949, as amended (5 U. S. C. 1071 et seq.), when such nonregularly scheduled work is within the employee's basic workweek: *Provided*,

however, That all other provisions of such section 301 shall be in full force and effect: *Provided, further*, That no night differential may be paid for night overtime work that is not regularly scheduled. (Apr. 23, 1958, 72 Stat. 97, Pub. L. 85-383, § 1.)

AMENDMENTS

1958—Act of April 23, 1958, cited to text, amended the section by adding the last paragraph thereto.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

POLICY RE PLAYGROUNDS

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

§ 8-210. Comprehensive program for public recreation.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

POLICY RE PLAYGROUNDS

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

§ 8-211. Trust fund created—Depository for fees and receipts—Expenditure—Quarterly audit.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. The function of the quarterly audit of the trust fund of the District of Columbia Recreation Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 8-211a. Advances to superintendent of recreation.

The disbursing officer of the District of Columbia is authorized to advance to the superintendent of

recreation upon requisition previously approved by the auditor of the District of Columbia, sums of money to be used for the expense of conducting activities of the Recreation Board under the trust fund created by sec. 8-211, the total of such advancements not to exceed \$4,000 at one time. (Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11.)

COMPILER'S NOTE

Sec. 11 of the act of Aug. 3, 1951, cited to text, is substantially the same as a provision which appeared in prior annual appropriation acts.

CROSS REFERENCE

For omnibus provisions authorizing the disbursing officer of the District of Columbia to advance moneys for various purposes, see section 10-103a.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The function of approving requisitions described in the above section was transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

REPEATED

Act July 5, 1955, 69 Stat. 262, ch. 272, § 9.

Act July 1, 1954, 68 Stat. 394, ch. 449, § 10.

Act July 31, 1953, 67 Stat. 295, ch. 299, § 11.

Act July 5, 1952, 66 Stat. 391, ch. 576, § 11.

Article III.—Relationship of the Board to other agencies

§ 8-214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.

NOTES TO DECISIONS

PLAYGROUND DESIGNATION—CONSTITUTIONALITY

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10)

POLICY RE PLAYGROUNDS

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al. v. Recreation Board for District of Columbia et al.* (1952, 104 F. Supp. 10).

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chap.	Sec.
4. Exchange of District-owned land.....	9-401
5. Repairs and improvements.....	9-501

Chapter 1.—REGULATING PROVISIONS

- Sec.
- 9-133. District of Columbia buildings—Control of Commissioners.
- 9-134. Designation of employees to protect life and property outside the District—Powers of arrest—weapons and uniforms.
- 9-135. Rules and Regulations.
- 9-136. Penalty for violation of rules and regulations.
- 9-137. Acceptance of collateral for appearance before United States Commissioner—Deposit of Collateral.
- 9-138. Agreements with States—Charges for Services.

§ 9-101 [20: 1579]. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

TRANSFER OF FUNCTIONS

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

RIPARIAN BOUNDARIES

Congress has granted power to Commissioners of District of Columbia to establish riparian boundaries. *Martin v. Standard Oil Co. of New Jersey* (1952, 198 F. 2d 523).

§ 9-118. Capitol grounds area.

NOTES TO DECISIONS

JURISDICTION

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and, therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

JURY QUESTION

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9-126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

NOTES TO DECISIONS

JURISDICTION

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and, therefore, had right to

arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

JURY QUESTION

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9-131. Traffic regulations by Capitol Police Board—Penalties—Prosecution.

NOTES TO DECISIONS

JURISDICTION

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

JURY QUESTION

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen v. United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9-133. District of Columbia buildings—Control of Commissioners.

All buildings belonging to the District of Columbia shall be under the jurisdiction and control of the Commissioners of said District. (June 29, 1937, 50 Stat. 377, ch. 403, § 1.)

§ 9-134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.

(a) The Commissioners of the District of Columbia may designate any employee of the District to protect life and property in and on the buildings and grounds of any institution upon land outside the District acquired by the United States for the District of Columbia for the establishment or operation thereon of any sanatorium, hospital, training school, correctional institution, reformatory, workhouse, or jail: *Provided*, That such employee shall be bonded for the faithful discharge of such duties, and the Commissioners of the District of Columbia shall fix the penalty of any such bond. Whenever any employee is so designated he is hereby authorized and empowered (1) to arrest under a warrant within the buildings and grounds of any such institution any person accused of having committed within any such buildings or grounds any offense against the laws of the United States, or against any rule or

regulation prescribed pursuant to this Act; (2) to arrest without a warrant any person committing any such offense within such buildings or grounds, in his presence; or (3) to arrest without warrant within such buildings or grounds, any person whom he has reasonable grounds to believe has committed a felony in such buildings or grounds.

(b) Any individual having the power to arrest as provided in subsection (a) of this section may carry firearms or other weapons and shall wear such uniform with such identification badge as the Commissioners may direct or by regulation may prescribe. (July 3, 1956, 70 Stat. 488, ch. 508, § 1.)

§ 9-135. Rules and regulations.

The Commissioners may make and amend such rules and regulations as they deem necessary for the protection of life and property in or on the buildings and grounds of any such institution. (July 3, 1956, 70 Stat. 488, ch. 508, § 2.)

§ 9-136. Penalty for violation of rules and regulations.

Any person who knowingly and willfully violates any rule or regulation prescribed under sections 9-134 to 9-138 shall be guilty of a misdemeanor, and shall be fined not more than \$500 or imprisoned not more than six months or both. (July 3, 1956, 70 Stat. 488, ch. 508, § 3.)

§ 9-137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

The officer on duty in command of those employees designated by the Commissioners as provided in section 8-134 may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under sections 9-134 to 9-138, for appearance in court or before the appropriate United States commissioner; and such collateral shall be deposited with the United States commissioner sitting in the district where the offense has been committed. (July 3, 1956, 70 Stat. 488, ch. 508, § 4.)

§ 9-138. Agreements with States—Charges for services.

The Commissioners may enter into agreements with any of the States, or any political subdivision thereof, where any such institution mentioned in section 9-134 is located, for such governmental services as the Commissioners shall deem necessary to the efficient and proper government of such institution, and they may, from time to time, agree to modifications in any such agreement: *Provided*, That where the charge for any such service is established by the laws of the State within whose territorial limits such institution is situated, the Commissioners may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (July 3, 1956, 70 Stat. 488, ch. 508, § 5.)

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.

9-219. Supervision and approval of plans and specifications.

9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1968, last day for advancement of loans.

§ 9-201 [20: 1584]. Municipal center—Establishment.

TRANSFER OF FUNCTIONS

Reorganization Order No. 42 of the Board of Commissioners dated June 23, 1953, established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department was to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The order sets out the functions of the new Department and its organization. The order abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Superintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division; and provided that all of their functions and positions be transferred to the Department of Buildings and Grounds. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 9-204 [20: 1587]. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department is set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 9-219. Supervision and approval of plans and specifications.

The plans and specifications for all building construction administered by the Commissioners of the District of Columbia shall be prepared under the supervision of the municipal architect, and those for school buildings after consultation with the Board of Education, and shall be approved by the Commissioners and all such construction shall be in conformity to such plans and specifications. (July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

§ 9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1968, last day for advancement of loans.

(a) A program of construction to meet capital needs of the government of the District of Columbia

is hereby authorized. Such program shall include, without limitation, projects relating to activities to meet the needs of the public in the fields of education, health, welfare, public safety, recreation, and other general government activities.

(b) To assist in financing the cost of constructing facilities required for activities financed by the general fund of the District, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided*, That the total principal amount of loans advanced pursuant to this section shall not exceed \$75,000,000: *Provided further*, That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budgets submitted for the District, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further*, That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952, sections 1-1001 to 1-1013. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in the Treasury of the United States to the credit of the general fund of the District.

(c) The loans authorized pursuant to this section, or any part or parts thereof, shall be advanced to the Commissioners on their requisition therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

(d) Loans made under this section during any six-month period (beginning with the six-month period ending December 31, 1958) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the general fund.

(f) No loans shall be advanced pursuant to this section after June 30, 1968. (June 6, 1958, 72 Stat. 183, Pub. L. 85-451, § 1.)

DEFINITIONS

Section 3 of the act of June 6, 1958, cited to text, provides: "As used in this Act the term 'District' means the District of Columbia and the term 'Commissioners' means the Board of Commissioners of the District of Columbia."

Chapter 3.—SALE OF PUBLIC LANDS

§ 9-301 [20: 1621]. Commissioners authorized to sell real estate.

TRANSFER OF FUNCTIONS

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, 66 Stat. 824, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia. The order and plan are set out in the appendix to Title 1.

§ 9-302 [20: 1622]. Expenses of sales of real estate.

TRANSFER OF FUNCTIONS

See note under section 9-301 concerning the Administrative Services Office.

§ 9-303 [20: 1623]. Commissioners to execute deeds to sell real estate.

TRANSFER OF FUNCTIONS

See note under section 9-301 concerning the Administrative Services Office.

§ 9-306 [20: 1626]. Expenses of sales.

TRANSFER OF FUNCTIONS

See note under section 9-301 concerning the Administrative Services Office.

Chapter 4.—EXCHANGE OF DISTRICT-OWNED LAND

Sec.

9-401. Commissioners empowered to effect exchange.

9-402. Publication of intended exchange.

9-403. Authorization for execution of proper deed of conveyance.

9-404. Authority to pay or receive amounts as part of consideration for exchange.

§ 9-401. Commissioners empowered to effect exchange.

Where two lots or parcels of land abut each other and one of such lots or parcels belongs to the District of Columbia, the Commissioners of the District of Columbia, with the approval of the National Capital Park and Planning Commission, are hereby authorized and empowered, when in their judgment and discretion it is for the best interest of the District of Columbia, to exchange such District-owned land, or part thereof, for the abutting lot or parcel of land, or part thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283, § 1.)

§ 9-402. Publication of intended exchange.

No such exchange shall be made unless the Commissioners of said District shall, thirty days prior thereto, publish in a newspaper of general circulation in the said District a notice of their intention to make such exchange and such notice shall include a description by lot or parcel number or otherwise of all lots or parcels to be exchanged and the appraised value thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283, § 1.)

§ 9-403. Authorization for execution or acceptance of proper deed of conveyance.

The said Commissioners are hereby authorized to execute a proper deed of conveyance for the land belonging to the District to be conveyed and to accept a proper deed of conveyance from the owner

of such abutting real estate. (Aug. 1, 1951, 65 Stat. 150, ch. 283, § 1.)

§ 9-404. Authority to pay or receive amounts as part of consideration for exchange.

If, in the opinion of the Commissioners, the value of the land to be conveyed to the District is in excess of the value of the land to be conveyed by the District, the Commissioners are authorized to pay, within the limitation of appropriations therefor, to the abutting property owner the amount of such excess as determined by the Commissioners, on the basis of an appraisal, and, if the value of the land to be conveyed by the District is in excess of the value of the land to be conveyed to the District, the Commissioners shall require the abutting property owner to pay such excess as determined by the Commissioners, on the basis of an appraisal, as part of the consideration for the said exchange. (Aug. 1, 1951, 65 Stat. 150, ch. 283, § 1.)

Chapter 5.—REPAIRS AND IMPROVEMENTS

Sec.

9-501. Repairs and improvements—Working fund.

§ 9-501. Repairs and improvements—Working Fund.

Work performed for repairs and improvements may be by contract or otherwise, as determined by the Director of Buildings and Grounds for amounts not exceeding \$5,000 and as determined by the Commissioners for amounts exceeding \$5,000; and the Commissioners are authorized to establish a working fund for such purposes without fiscal year limitation, said fund to be reimbursed for repairs and improvements performed under that fund from funds available for these purposes, and payments are authorized to be made to said fund in advance if required by the Director of Buildings and Grounds, subject to subsequent adjustment, from funds available for necessary expenses, including allowances for privately owned automobiles. (July 1, 1954, 68 Stat. 394, ch. 449, § 5; July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 15.)

AMENDMENTS

1959—Section 15 of the act of July 23, 1959, amended the section so as to make the determination by the Director of Buildings and Grounds where amount involved is \$5,000 or less, and by the Commissioners where the amount involved is in excess of \$5,000.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

§ 10-101 [28: 1]. Department of Weights, Measures, and Markets created—Superintendent—Assistants and employees.

TRANSFER OF FUNCTIONS

See note under section 1-246 concerning the Department of Licenses and Inspections.

§ 10-103a. Advancement of moneys by disbursing officer.

The disbursing officials designated by the Commissioners are authorized to advance to such officials as may be approved by the Commissioners such amounts and for such purposes as the Commissioners may determine. (Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 7.)

REPEATED

Act July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 7.
Act June 27, 1957, 71 Stat. 205, Pub. L. 85-61, § 7.
Act June 29, 1956, 70 Stat. 453, ch. 479, § 9.
Act July 1, 1954, 68 Stat. 394, ch. 449, § 10.
Act July 31, 1953, 67 Stat. 295, ch. 299, § 11.
Act July 5, 1952, 66 Stat. 391, ch. 576, § 11.

COMPILER'S NOTE

Section 7 of act of August 6, 1958, cited to text, makes amendments to phraseology and the section is fully set out above.

Section 9 of the act of June 29, 1956, cited to text, supersedes provisions more limited in scope which were contained in prior appropriation acts. These former provisions were classified to section 10-103a of the Code beginning with the 1951 edition of the Code.

Section 11 of the act of Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11, is substantially the same as a provision which appeared in prior annual appropriation acts.

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Act of July 5, 1955, 69 Stat. 262, ch. 272, § 9, repeats in substance the provisions of this section, except that the Director of Licenses and Inspections is substituted for the Director of the Department of Weights and Measures whose functions were taken over by the Director of Licenses and Inspections, by Reorganization Order No. 55, set out in appendix to Title 1.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952.

The function of approving the requisitions described in the above section was transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 10-137 [28: 37]. Farmers' produce market—Regulations—Charges.

NOTES TO DECISIONS

PROPRIETARY FUNCTION

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia v. Walter C. Green* (1955, 96 U. S. App. D. C. 20, 223 F. 2d 312).

PART II

CIVIL PROCEDURE

TITLE 11.—JUDICIARY AND JURISDICTION

Chap.	Sec.
16. Uniform Support.....	1601

Chapter 3.—DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Sec.
11-332. Secretarial and clerical assistants for United States commissioner—Expenses.

§ 11-301 [18: 41]. Constitution—Court of general jurisdiction—Assignment of justice for condemnation cases.

CROSS REFERENCE

Act of August 6, 1958, Pub. L. 85-593, 72 Stat. 497, amends sections 45 and 136 of title 28 of the U. S. Code and provides for the manner of designation of chief judges of the Circuit and District Courts

§ 11-305 [18: 43]. Jurisdiction—Powers of District Courts conferred.

CROSS REFERENCE

Act of July 25, 1958, 72 Stat. 415, Pub. L. 85-554, amends sections 1331 and 1332 of title 28 of the U. S. Code so as to raise the minimum jurisdictional requirements of district courts from \$3,000.00 to \$10,000.00 and said sections are also amended in other respects.

§ 11-306 [18: 44]. General jurisdiction.

CROSS REFERENCE

Act of July 25, 1958, 72 Stat. 415, Pub. L. 85-554, amends sections 1331 and 1332 of title 28 of the U. S. Code so as to raise the minimum jurisdictional requirements of district courts from \$3,000.00 to \$10,000.00 and said sections are also amended in other respects.

NOTES TO DECISIONS

AMOUNT CLAIMED

If matter in controversy in a case exceeds the value of \$3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned.

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential, and present probability that damages will exceed the sum is enough. *Al Friedman v. International Association of Machinists* (1955, 95 U. S. App. D. C. 128, 220 F. 2d 808).

FOREIGN AGENTS

In proceeding in the United States District Court for District of Columbia by a foreign power to compel its agents in the United States to turn over funds and records in their hands to another agency of such power where power was represented in the jurisdiction by its ambassador who instituted the suit and defendants were residents of the jurisdiction and had made a general appearance through their attorney, court had jurisdiction over the parties. *Republic of China v. Pang-Tsu-Mow et al.* (1951, 101 F. Supp. 646).

FORUM NON CONVENIENS

On record in action arising out of automobile collision occurring in Maryland, in which state all of parties and most of witnesses resided, it was not abuse of discretion for federal district court for District of Columbia, which knew that case could not be transferred to another federal court, to dismiss complaint on ground of forum non conveniens. *Lawrence S. Gross et ano. v. Frances C. Owen* (1955, 95 U. S. App. D. C. 222, 221 F. 2d 94).

JURISDICTION

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

JURISDICTION, GENERALLY

An action by citizens of New Jersey against defendant, a foreign corporation doing business in the District of Columbia, for injuries sustained by plaintiff from a collision between a bus and truck in West Virginia was a transitory tort action as to which the District Court could take jurisdiction. *David Blake et al. v. Capitol Greyhound Lines* (1955, 95 U. S. App. D. C. 334, 222 F. 2d 25).

In view of fact that suit against father for maintenance of children is a personal, transitory action, when father's residence was in District of Columbia, children were entitled to sue him therein, notwithstanding fact of their own residence in Virginia. *Scholla v. Scholla* (1953, 92 U. S. App. D. C. 9, 201 F. 2d 211).

Under section granting federal district court for District of Columbia cognizance of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, federal district court for District of Columbia possessed jurisdiction to grant relief in suit between aliens, where suit was brought in District and defendants submitted to process of court. *Pang-Tsu Mow v. Republic of China* (1952, 91 U. S. App. D. C. 324, 201 F. 2d 195).

LAW GOVERNING

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over District of Columbia must be harmonized with constitutional definition of judicial power of United States, and so harmonized requires conclusion that when parts of Maryland and Virginia became originally incorporated within District of Columbia, the authority of Congress over the ceded area enabled it to clothe courts of District with jurisdiction like that left behind in Maryland and Virginia. *Pang-Tsu Mow v. Republic of China* (1952, 91 U. S. App. D. C. 324, 201 F. 2d 195).

§ 11-312 [18: 51]. Appointment of auditor, messengers and other officers.

CROSS REFERENCE

For provisions authorizing judges to appoint law clerks and secretaries, see amendment made by act of September 1, 1959, Pub. L. 86-221, to section 752 of Title 28 of the U.S. Code.

§ 11-319 [18:74]. Special panel—Struck jury—Procedure.

CROSS REFERENCE

For provisions authorizing additional peremptory challenges see section 1870 of title 28, U.S. Code.

§ 11-326 [18:102]. Enforcement of decrees.

NOTES TO DECISIONS

AUTHORITY OF REVIEWING COURT

Reviewing court may not supply a finding required for validity of commitment for contempt for nonpayment of money judgment. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

BASIS FOR COMMITMENT

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Id.*

BASIS FOR CONTEMPT ADJUDICATION

In proceeding on motion to adjudicate respondent in contempt for failure to comply with order of court, wherein record showed that respondent did not have possession or control of money received from sale of estate stocks and that conservator had attached his interest in certain other property which, when liquidated, would satisfy money judgment against him in substantial part and probably in full and that he had no other known assets, District of Columbia Code barred imprisonment under contempt order entered against him and contempt adjudication was unwarranted. *L. J. Blackwelder v. L. M. Collins, Collector, etc.; P. D. Sterling v. L. M. Collins, Collector, etc.* (1958, 102 U. S. App. D. C. 290, 252 F. 2d 854).

CONTEMPT

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen v. Queen* (1951, 88 U. S. App. D. C. 157, 188 F. 2d 624).

DECREE AWARDING ATTORNEY'S FEE

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman v. Berman* (1953, 92 U. S. App. D. C. 77, 202 F. 2d 812).

GROUND S FOR IMPRISONMENT

Where judgments did not require payment of any specifically identified or identifiable money, and would be satisfied by payment of amount in legal tender from any source, judgment debtor could not be imprisoned for failure to pay since District of Columbia Code forbids imprisonment for contempt of a decree which only directs payment of money except in cases where imprisonment is "especially provided for". *L. J. Blackwelder v. L. M. Collins, Collector, etc.; P. D. Sterling v. L. M. Collins, Collector, etc.* (1958, 102 U. S. App. D. C. 290, 252 F. 2d 854).

IMPRISONMENT

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

§ 11-332. Secretarial and clerical assistants for United States commissioner—Expenses.

Each United States commissioner for the District may employ secretarial and clerical assistants in such number and incur such other expenses as the district court considers necessary. (June 29, 1953, 67 Stat. 102, ch. 159, § 403.)

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

Chapter 5.—PROBATE COURT

§ 11-504. Powers—Not exclusive of equity jurisdiction in certain cases.

NOTES TO DECISIONS

ATTORNEY'S FEES

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Otho Ashton et ano. v. Arravera Ashton* (D. C. Mun. App. 1955, 117 A. 2d 459).

REVOCATION

Where decedent's sister obtained letters of administration on false representation that decedent had been divorced from his widow, district court did not abuse its discretion in revoking letters, even though representation was not in bad faith. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

Under District of Columbia statute specifying causes for which letters of administration may be revoked, an administrator may be removed because his or her original appointment was due to misconception by appointing court of material facts, arising from misstatement by applicant for letters, even though this cause is not specified in statute. *Id.*

§ 11-518 [18:138]. Costs—Judgment—Execution.

NOTES TO DECISIONS

COSTS IN PROBATE PROCEEDINGS

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *G. A. Adlung, Executor, etc. v. A. E. Gotthardt et al.* (1958, 103 U.S. App. D.C. 195, 257 F. 2d 199).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

Chapter 6.—POLICE COURT

§ 11-604 [18: 153]. Affrays and bawdy-houses—Concurrent jurisdiction.

NOTES TO DECISIONS

CONTROLLING LAW

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

LIABILITY WHEN MOTHER DESERTS

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

§ 11-605 [18: 154]. Threats to do bodily harm—Concurrent jurisdiction.

The Municipal Court for the District of Columbia shall also have concurrent jurisdiction with the United States District Court for the District of Columbia of threats to do bodily harm and any person convicted of such offense shall be sentenced to imprisonment not exceeding six months or a fine not exceeding \$500, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (July 16, 1912, 37 Stat. 193, ch. 235, § 2; June 29, 1953, 67 Stat. 98, ch. 159, § 212.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by substituting "Municipal Court" for "police court" in the first sentence. The act also amended the penalty provisions to provide for imprisonment up to six months or a fine of not more than \$500, or both, and to provide for peace bonds up to 1 year's duration in lieu of or in addition to the fine or imprisonment.

§ 11-606 [18: 155]. Powers—To issue process, punish for contempt—Limitation, allow bond or bail—Fines and forfeitures—Embezzlement thereof—Penalty.

The police court shall have power to issue process for the arrest of persons against whom information may be filed or complaint under oath made and to compel the attendance of witnesses, to enforce any of its judgments by fine or imprisonment, or both, and to make such rules and regulations as may be deemed necessary and proper for conducting business in said court. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.

Every person charged with an offense triable in the police court may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the said police court or the station keeper of the police precinct within which such person may be apprehended. And whenever any sum of money shall be deposited as collateral security as hereby provided it shall remain, in contemplation of law,

the property of the person depositing it until duly forfeited by the court; and when forfeited it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the said United States or of the said District; and every person receiving any sum of money deposited as hereby provided shall be deemed in law the agent of the person depositing the same or of the said United States or the said District, as the case may be, for all purposes of properly preserving and accounting for such money. And all fines payable and paid under judgment of the said police court shall upon their payment, immediately become, in contemplation of law, the property of the said United States or the said District, according to the charge upon which such fine may be adjudged; and the person receiving any such fine shall be deemed in law the agent of the said United States or the said District as aforesaid, as the case may be; and any person being an agent as hereinbefore contemplated and defined, who shall wrongfully convert to his own use any money received by him as hereinbefore provided shall be deemed guilty of embezzlement, and upon conviction thereof be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or both: *Provided*, That nothing herein contained shall affect the ultimate rights under existing law of the Washington Humane Society, of the District of Columbia, in or to any fines or forfeitures paid and collected in the said police court. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1197, ch. 854, § 48; June 29, 1953, 67 Stat. 108, ch. 159, § 410.)

AMENDMENTS

1953—Act of June 29, 1953, struck the words "to punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either, and" from the first sentence of the section following the word "witness". The purpose of this amendment is to insure that the punishments which may be given for contempts committed before the civil branch of the Municipal Court are the same as those which may be given for those committed before the criminal branch.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of \$300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Jacob Morris Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

IMPRISONMENT FOR NONPAYMENT

Where trial imposed a money fine against defendant operator of automobile body works for failure to file monthly Sales and Use tax returns as required by statute, trial court under statute could enforce payment of fine

by ordering defendant in the alternative to serve a jail sentence. *Perlich v. District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 227).

RECORD ON APPEAL

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of \$300 and in default of payment to be imprisoned for an additional year. *Jacob Morris Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

§ 11-616 [18: 165]. Prosecutions—Jury trials—Default of fines—Penalty.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of \$300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Jacob Morris Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

IN GENERAL

The fact that ruling of District of Columbia Municipal Court granting jury trial in prosecution for practicing healing arts without a license could not be reviewed in the regular course of appeal was not such an exceptional circumstance as would call for issuance of writ of mandamus expunging order from record. *United States v. Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

MANDAMUS

The District of Columbia Municipal Court had jurisdiction to direct that charge of practicing healing arts without license should be tried by jury, and an erroneous decision on the question would not constitute such unlawful exercise of authority as would entitle Government to writ of mandamus directing Municipal Court to expunge jury trial order from the record. *United States v. Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

RIGHT TO TRIAL BY JURY

The District of Columbia Municipal Court acting on demand for jury trial in prosecution for practice of healing arts without license was performing a judicial function, and not a ministerial act which could be controlled by mandamus. *United States v. Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

Under statute providing for right to jury trial in cases in which fine or penalty may be more than \$300, trial by jury should be had if penalty of more than \$300 may be imposed on any one offense, but consolidation for trial of nine petty offenses did not amount to one greater offense, and, therefore, possibility that general sentence exceeding \$300 could be imposed would not require trial by jury upon defendant's demands. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

RECORD ON APPEAL

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of \$300 and in default of payment to be imprisoned for an additional year. *Jacob Morris Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

§ 11-625 [18: 174]. Fines to be paid to clerk—Accounting by clerk.

AMENDMENTS

Section 3 of the act of August 21, 1957, 71 Stat. 391, Pub. L. 85-157, amends section 12 of the act of September 1, 1916, 39 Stat. 718, as amended to read as set out in sections 4-521 to 4-535. Section 12 of the act of September 1, 1916, was classified to sections 4-113, 4-114, 4-129, 4-159, 4-160, 4-501, 4-503, 4-506 to 4-510, 4-512, 4-513, 4-514, and 11-625.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 dated August 28, 1952, and effective September 2, 1952. The function of prescribing the forms described in section 11-625 was transferred from the Auditor of the District of Columbia to the Accounting Office, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 11-627 [18: 176]. Accounts, how audited.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The function of the quarterly audit of the accounts of the clerk of the Police Court was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 7.—MUNICIPAL COURT AND MUNICIPAL COURT OF APPEALS

SUBCHAPTER II.—THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

Sec.

- 11-753. Judges — Appointments — Removal — Salaries—Oath—Qualifications.
- 11-757. Authority to suspend imposition or execution of sentence.

SUBCHAPTER IIA.—DOMESTIC RELATIONS BRANCH, MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

- 11-758. Establishment.
- 11-759. Definitions.
- 11-760. Additional Judges—Assignment.
- 11-761. Judges' authority to appoint and remove clerks.
- 11-762. Jurisdiction.
- 11-763. Power of court to effectuate purposes for which created.
- 11-764. Separate docket.
- 11-765. Process.
- 11-766. Rules.
- 11-767. Appeals.
- 11-768. Sessions.
- 11-769. Jurisdiction of Juvenile Court not affected.
- 11-770. Appropriation authorized.

SUBCHAPTER III.—THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

- 11-772. Right to appeal—Appeal from the decisions of various boards and commissions—Final order or judgment—Interlocutory orders—Appeals to United States Court of Appeals for the District of Columbia—Procedure—Printing of record or briefs on appeal—Scope of review—Retroactive effect.

SUBCHAPTER I.—MUNICIPAL COURT

§ 11-703 [18: 193]. Jurisdiction—Limited—Exclusive in certain actions.

NOTES TO DECISIONS

CONSTRUCTION

As used in code section denying municipal court jurisdiction in "cases involving title to real estate", quoted expression is identical in meaning with phrase "cases where title to real estate is in issue". *Shapiro v. Christopher* (U. S. App. D. C. 1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

EJECTMENT

The purpose of ejectment, at common law, was primarily to determine question of right to possession, and secondarily question of title, if that question were raised so as to make right to possession depend upon it; and its function in the District of Columbia is the same since the repeal of the mandatory requirement that title be an issue. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

JURISDICTION

Rights and obligations between cooperatively owned corporation and member-tenant under proprietary lease on which member-tenant has defaulted can be determined in a summary landlord and tenant proceeding in municipal court and need not be litigated in federal District Court. *Valois, Inc. v. Thorne* (D. C. Mun. App. 1952, 86 A. 2d 530).

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

SPECIAL PLEA, NECESSITY FOR

Code sections, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, are mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case on issue of possession. *G. H. Sayles v. E. Eden* (D.C. Mun. App. 1958, 144 A. 2d 895)

TITLE TO REAL ESTATE

Where action by administrator of decedent's estate sought in part to require trustees under deed of trust on certain real estate to release such deed and to compel the cancellation of notes secured thereby, action necessarily and directly put title to real estate in issue and hence Municipal Court for the District of Columbia, Civil Division, did not have jurisdiction. *R. Barbour as administrator etc. v. E. C. Baltz, etc.* (D.C. Mun. App. 1958, 146 A. 2d 905).

Municipal court had jurisdiction of ejectment action brought by owner of land against occupant who was in possession without right after lawful entry where such occupant did not challenge owner's title. *Shapiro v. Christopher* (U. S. App. D. C. 1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

The code section, making any final judgment rendered in action of ejectment conclusive as to title thereby established as between parties to action and all parties claiming under them since commencement of action, was enacted to abrogate doctrine of common law as to inconclusiveness of judgment of ejectment and was not intended to change remedy of ejectment from one well defined as possessory in character to one in which title is automatically in issue. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

§ 11-710 [18: 200]. Clerk—To receive and care for fees—Deposits—Accounting.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The functions relating to the itemized statement forms referred to in section 11-710 were transferred from the Auditor of the District of Columbia to the Accounting Office, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 11-715 [18: 205]. Right to jury trial—Proceedings after verdict.

NOTES TO DECISIONS

WAIVER OF RIGHT TO JURY TRIAL

Where no demand for jury trial was made within five days after case was at issue, the right to jury trial was waived, though the case was consolidated for trial with another case in which jury trial had been demanded. *Grant v. Williams* (D. C. Mun. App. 1953, 94 A. 2d 475).

Where trial of consolidated cases started before jury but judge later announced that one of the cases would not be submitted to the jury because there had been no jury demand in that case, and no objection was raised to such action, such ruling was not subject to review on appeal. *Id.*

§ 11-716 [18: 206]. Jurors—How drawn.

NOTES TO DECISIONS

USE OF JURY IN DIFFERENT DIVISION

Fact that jury which tried civil case was drawn from criminal division of court, did not invade any right of defendant, particularly where defendant advanced no contention as to disqualification or lack of qualification of any individual juror or that any irregularity attended drawing of panel. *Guaranty Development Co. v. Circle Paving Co.* (D. C. Mun. App. 1951, 83 A. 2d 160).

§ 11-719 [18: 209]. Costs—Deposit for.

NOTES TO DECISIONS

SUIT BY NONRESIDENT

Generally, there is no restriction on right of nonresident to file suit in the Municipal Court for the District of Columbia. *Rice v. Salnier* (D. C. Mun. App. 1952, 86 A. 2d 175).

§ 11-721 [18: 211]. Assignment of deputy marshals.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *H. O'Neill Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F. 2d 714)

§ 11-722 [18: 212]. Power to make rules, prescribe fees, and costs.

NOTES TO DECISIONS

FINAL ORDERS AND DECREES

In suit for balance due on note wherein defendant filed a counterclaim for malicious prosecution, order dismissing counterclaim without express determination that there was no just reason for delay and without express direction for entry of judgment was not a final appealable order. *Wood v. G. S. A. Region 3 Employees F. C. U* (D. C. Mun. App. 1958, 138 A. 2d 491).

Subject to certain exceptions, jurisdiction of Municipal Court of Appeals for the District of Columbia is limited to review of final orders and judgments. *Id.*

IN GENERAL

Municipal Court of District of Columbia is a court of record, which has equitable jurisdiction, rule-making power, and its actions are subject to review by Municipal Court of Appeals. *Encyclopaedia Britannica, Inc. v. Jones et al.* (1951, 101 F. Supp. 521).

JUDGMENTS OF MUNICIPAL COURT

Judgments of the Municipal Court of the District of Columbia should and must be enforced in that court. *Encyclopaedia Britannica v. Jones* (1951, 101 F. Supp. 521).

JURISDICTION NOT ENLARGED BY CONSENT

The Municipal Court of Appeals has no jurisdiction to entertain an appeal from an order or judgment that is not final, and consent of the parties cannot enlarge its jurisdiction. *Moyer v. Moyer* (D. C. Mun. App. 1957, 134 A. 2d 649).

§ 11-722a. Deposits for jury trials earned.

Deposits made on demands for jury trials in accordance with rules prescribed by the Municipal Court under authority granted in section 11-722 shall be earned unless, prior to three days before the time set for such trials, including Sundays and legal holidays, a new date for trial be set by the court, cases be discontinued or settled, or demands for jury trials be waived. (Aug. 3, 1951, 65 Stat. 160, ch. 292, § 1.)

REPEATED

Act July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
Act August 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
Act June 27, 1957, 71 Stat. 196, Pub. L. 85-61, § 1.
Act June 29, 1956, 70 Stat. 444, ch. 479, § 1.
Act July 5, 1955, 69 Stat. 250, ch. 272, § 1.
Act July 1, 1954, 68 Stat. 383, ch. 449, § 1.
Act July 31, 1953, 67 Stat. 283, ch. 299, § 1.
Act July 5, 1952, 66 Stat. 379, ch. 576, § 1.

COMPILER'S NOTE

Sec. 1 of the act of Aug. 3, 1951, cited to text, is substantially the same as a provision which appeared in prior annual appropriation acts.

§ 11-724 [18:214]. Judgments and executions—Interest.

NOTES TO DECISIONS

LIABILITY FOR MARSHAL'S NEGLIGENCE

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *H. O'Neill Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F. 2d 714).

§ 11-735 [18:225]. Forcible entry and detainer—Definition—Summons—Procedure.

Whenever any person shall detain possession of real property without right, or after his right to possession shall have ceased, it shall be lawful for the municipal court, on complaint under oath verified by the person aggrieved by such detention or by his agent or attorney having knowledge of the facts, to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Mar. 3, 1901, 31 Stat. 1193, ch. 854, § 20; Apr. 19, 1920, 41 Stat. 555, ch. 153, § 1; June 18, 1953, 67 Stat. 66, ch. 130, § 1.)

AMENDMENTS

1953—Act of June 18, 1953, amended the section by striking the previous language and inserting the language appearing above which simplified and broadened the law.

NOTES TO DECISIONS

LIABILITY FOR MARSHAL'S NEGLIGENCE

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *H. O'Neill Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F. 2d 714).

"LODGER," "TENANT," DISTINGUISHED

Where apartment hotel had been licensed as a "hotel" by superintendent of licenses, full hotel service was furnished all occupants without extra charge, all rates were by the day with discount in case an apartment was occupied a week or more, and when defendant rented first furnished apartment he signed usual type of registration card used by hotels agreeing to pay certain sum per day, and thereafter moved to another furnished apartment without signing a new registration card and agreed to pay an increased rate, status of defendant was that of a "lodger" rather than a "tenant" and hence he was not entitled to notice to quit because of nonpayment. *J. H. Davis v. Francis Scott Key Apartments* (D. C. Mun. App. 1958, 140 A. 2d 188).

NOTICE

Where landlord served notice to quit on tenant but shortly thereafter commenced suit for possession before such notice had run its statutory time, and suit was dismissed on tenant's motion for failure to give notice to quit, dismissal of action did not prevent bringing of subsequent action based on said notice. *Royall v. Weitzman* (D. C. Mun. App. 1956, 125 A. 2d 680).

PARTIES

In action by purchaser of dwelling house against vendors to recover possession, wherein certain persons living in the house intervened, claiming to be tenants, intervenors to establish their right to intervene, as well as their defense, were required to prove that they were tenants, since, if they were merely roomers, they had no standing in action. *Taylor v. Dean et al.* (D. C. Mun. App. 1951, 78 A. 2d 382).

PERSON AGGRIEVED

Where lessees under concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to the new lessees, gave notice to monthly tenant pursuant to provisions of prior lease, such lessees were entitled to possession of premises, and were therefore "persons aggrieved" who were by statute entitled to bring summary proceedings to obtain possession. *Gulf Motors Inc. et ano. v. Coral L. Fenner et ano.* (D.C. Mun. App. 1955, 114 A. 2d 543).

PURPOSE

Where party occupying landowner's premises had no right to possession but his original entry had been lawful, and where action under forcible entry and detainer statute was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

REENTRY WITHOUT LEGAL PROCESS

Statute providing that whenever any person shall detain possession of realty without right, or after his right to possession shall have ceased, it shall be lawful for municipal court, on complaint under oath verified by person aggrieved by such detention or by his agent or attorney having knowledge of the facts, to issue a summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, does not abolish the common law right of

a landlord, when tenant's right to possession has ceased, to enter on leased premises and take possession thereof without use of legal process. *Harry Snitman v. Reuben Goodman et al.* (D. C. Mun. App. 1955, 118 A. 2d 394).

RIGHT OF TENANT IN COMMON

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *O. Bagby v. M. Honesty* (D.C. Mun. App. 1959, 149 A. 2d 786).

SUMMARY PROCEEDINGS

Under statute providing that whenever any person shall retain possession of realty without right, or after his right to possession shall have ceased, Municipal Court of District of Columbia may issue summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, remedy is summary in character, and the issue to be tried in such cases is the right of possession. *Rudder v. U. S. A.* (D. C. Mun. App. 1954, 105 A. 2d 741).

VERIFICATION

Where affidavit in action for possession of realty purported to be the affidavit of plaintiff corporation, affidavit contained no mention of any individual, making the affidavit as agent for the corporation, and signature of officer was not made as officer's individual signature, but as signature of corporate officer, the affidavit was fatally defective. *Strand Restaurant Co. v. Parks Engineering Co.*, (D. C. Mun. App. 1952, 91 A. 2d 711).

§ 11-736. Forcible entry and detainer—Service of summons.

NOTES TO DECISIONS

DELAY IN MOTION TO VACATE JUDGMENT

Where extenant's motion to vacate default judgment in action for possession of property was filed more than a year after she had been evicted pursuant to the judgment and writ of restitution, trial court was justified in denying motion. *Louise M. Renshaw v. Merritt Swift et ano.* (D. C. Mun. App. 1956, 123 A. 2d 618).

§ 11-738 [18: 228]. Forcible entry and detainer—Plea of title—Undertaking.

NOTES TO DECISIONS

APPEALABLE ISSUES

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by statute, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc. v. Suber* (D. C. Mun. App. 1954, 104 A. 2d 252).

DIRECTED VERDICT

Where claimant, who sought possession of commercial property, alleged that tenant held possession under expired leasehold, and tenant filed sworn answer denying claimant was entitled to possession and alleging that tenant was entitled to title and possession because of valid contract to purchase property which was entered into prior to alleged sale of premises to claimant, and tenant requested that case be certified to District Court for trial, directing verdict in claimant's favor on opening statements was improper since tenant's sworn answer was sufficient claim of title to entitle tenant to present such evidence of title so that trial court might determine whether title to real estate was necessarily involved in case. *Nickles v. Sullivan* (D. C. Mun. App. 1951, 83 A. 2d 283).

ESTOPPEL

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. *Shapiro v. Christopher* (U. S. App. D. C. 1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

JURISDICTION

The Municipal Court of the District of Columbia has no jurisdiction to try title to real property. *Ourisman Chevrolet, Inc. v. Suber* (D. C. Mun. App. 1954, 104 A. 2d 252).

REJECTION OF JURISDICTION

The Municipal Court of the District of Columbia should not reject jurisdiction in cases involving title to realty unless and until it is made to appear that title to land is necessarily and directly in issue between the parties. *Nickles v. Sullivan* (D. C. Mun. App. 1951, 83 A. 2d 283).

RIGHT OF TENANT IN COMMON

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *O. Bagby v. M. Honesty* (D.C. Mun. App. 1959, 149 A. 2d 786).

SPECIAL PLEA, NECESSITY FOR

Code sections, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, are mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case on issue of possession. *G. H. Sayles v. E. Eden* (D.C. Mun. App. 1958, 144 A. 2d 895).

Statute providing that title in summary proceedings shall be put in issue by plea under oath, accompanied by an undertaking, is mandatory and if not complied with, no question of title can be brought into case. *Ourisman Chevrolet, Inc. v. Suber* (D. C. Mun. App. 1954, 104 A. 2d 252).

In suit in Municipal Court for District of Columbia for possession of realty, where defendant attempted to put title in issue but failed to comply with mandatory provisions of statute requiring plea under oath accompanied by an undertaking, plaintiff had right to a trial of his claim for possession, and stay of proceeding pending final disposition of defendant's suit in District Court for specific performance of alleged contract to purchase disputed property was error. *Id.*

UNDERTAKING

Provisions of District of Columbia Code relating to certification of case involving title to realty to federal district court are mandatory, and defendant filing such a plea must comply with the statute, and if plea of title is not perfected in compliance with the statute, the municipal court has no alternative except to try the issue of possession. *Nickles v. Sullivan* (D. C. Mun. App. 1953, 97 A. 2d 920).

Municipal Court of District of Columbia did not abuse discretion in requiring \$7,500 undertaking to be posted by defendant who sought certification of case involving title to realty to federal district court. *Id.*

The amount of undertaking required in order to obtain certification of case involving title to realty to federal district court is a matter within sound discretion of Municipal Court of District of Columbia, and is not subject to reversal unless abuse of discretion is shown. *Id.*

Where defendant, in action for recovery of possession of realty, put title in issue and sought certification of case to federal district court, but failed to post undertaking required by District of Columbia Code, municipal court did not err in striking plea of title and in refusing to certify case. *Id.*

**§ 11-744 [18: 234]. Trial of right to attached property—
Notice to marshal, notice to plaintiff.**

NOTES TO DECISIONS

PRIORITIES OF LIENS

Where four dump trucks were sold by motor company to contractor for use in hauling topsoil to be purchased in Virginia, and on back of conditional sales contract was a purported assignment for value by motor company to a credit corporation, but conditional sales agreement was never actually assigned to credit corporation, and contractor registered trucks with Division of Motor Vehicles in Virginia, and owner of realty, who had contracted to sell topsoil, had no knowledge that motor company reserved liens on trucks, but he learned of recordation of conditional sales agreement in favor of credit corporation, and he then wrote to credit corporation and inquired as to status of recorded liens, and was informed by credit corporation that it had not financed conditional sale, and when owner of realty was not paid for topsoil he brought suit against contractor, and three of the trucks were seized under writ of attachment, lien of owner of realty was superior to that of motor company under Virginia law. *Davis v. Sheriff* (D. C. Mun. App. 1951, 81 A. 2d 344).

**§ 11-752. Composition—Appointments—Chief judge—
Tenure—Seal—Court of record.**

The court shall consist of sixteen judges appointed by the President with the advice and consent of the Senate, one of whom shall be designated by the President as chief judge.

The court shall adopt and have a seal, and shall be a court of record. (Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Oct. 25, 1949, 63 Stat. 887, ch. 706, § 1; Apr. 11, 1956, 70 Stat. 112, ch. 204, § 103 (a).)

AMENDMENTS

1956—Section 103 (a) of the act of April 11, 1956, Public Law 486, ch. 204, increases the number of judges from "thirteen" to "sixteen."

1949—The act of Oct. 25, 1949, cited to text, increased the number of judges from ten to thirteen, and provided that "appointments and reappointments in the case of the additional judges authorized by this Act shall be for a term of ten years each."

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see sections 11-758 to 11-770.

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, makes all sections (except sections 105, 106 and 107, classified to sections 11-762, 11-763, 16-210, 16-220, 16-416, and 32-786) effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) (11-752).

**§ 11-753. Judges—Appointments—Removal—Salaries—
Oath—Qualifications.**

AMENDMENT

1955—The act of July 1, 1955, 69 Stat. 290, ch. 302, § 2, increased the salary of the chief judge from \$13,500 to \$18,000, and of each associate judge from \$13,000 to \$17,500.

**SUBCHAPTER II.—THE MUNICIPAL COURT
FOR THE DISTRICT OF COLUMBIA**

**§ 11-755. Jurisdiction—Criminal and civil branch—
Exclusive in certain actions—Service of process—
Judgments—Duration—Docketing—Fees.**

NOTES TO DECISIONS

AMBIGUOUS PLEADING

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within

Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Joseph M. Whelan, etc. v. Sydney Hirshon* (1956, 98 U. S. App. D. C. 82, 232 F. 2d 339).

AMOUNT CLAIMED

Where landlord's complaint was in three counts, the first claiming rent at \$3,000, the second claiming damages for waste of \$780, and third making same claim for waste against third party, and when question of jurisdiction was raised landlord dismissed with prejudice the second and third counts, and trial proceeded on first count alone trial court was not without jurisdiction on theory that action claimed an amount in excess of \$3,000. *Beck v. Troiano* (D. C. Mun. App. 1958, 138 A. 2d 492).

Where plaintiff filed four counts charging assault and battery and slander and each count claimed damages of \$3,000, Municipal Court for District of Columbia, whose pecuniary jurisdiction is \$3,000, was without jurisdiction, as against contention that each claim must be considered as separate claim and that municipal court had jurisdiction so long as none of the single claims has sought more than the \$3,000. *Reeves v. Yale Transit Corp.* (D. C. Mun. App. 1957, 128 A. 2d 792).

The United States District Court for the District of Columbia had no jurisdiction over a discharged employee's claim against employer that he was discharged in violation of collective bargaining agreement where amount in controversy was less than \$3,000, as smaller claims were within exclusive jurisdiction of Municipal Court for the District of Columbia. *United Electrical, Radio and Machine Workers of America, etc. v. General Electric Co.* (1956, 77 U. S. App. D. C. 306, 231 F. 2d 259).

Where, in last full year of discharged employee's employment, most of his time was spent on union work for which he was not paid by company, and his earnings from company were only \$618.51, and his company earnings would not have been larger in future, and \$6,000 life insurance contract which he had taken through company could be continued by him after termination of employment through private contract with insurer, such discharged employee's claim against company for alleged wrongful discharge was not within jurisdiction of United States District Court for District of Columbia. *Id.*

Where statute limits jurisdiction of trial court to amount claimed, jurisdiction of court to entertain action is determined by amount and nature of relief claimed in complaint and where plaintiff sought rescission of contract as distinguished from action for damages upon a rescission, and for relief beyond court's statutory jurisdictional maximum, the court lacked jurisdiction of the action. *Sydney Hirshon v. Joseph M. Whelan etc.* (D. C. Mun. App. 1955, 113 A. 2d 484).

If matter in controversy in a case exceeds the value of \$3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned.

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential and present probability that damages will exceed the sum is enough. *Al Friedman v. International Association of Machinists* (1955, 95 U. S. App. D. C. 128, 220 F. 2d 808).

Where plaintiff brought two separate actions, consolidated for trial, to collect commissions allegedly due from separate sales under contract whereby defendant was to pay plaintiff 5 percent commission on all sales to federal government agencies, and aggregate sum claimed exceeded maximum jurisdiction of municipal court, there was but one cause of action, and plaintiff could not, by splitting his cause of action, vest that court with juris-

diction. *Le John Mfg. Co. v. Webb* (D. C. Mun. App. 1952, 91 A. 2d 332).

When interest is allowed on tort claims as part of compensatory and punitive damages, such interest and damages must be included in deciding whether case is within \$3,000 jurisdictional limit of Municipal Court of District of Columbia. *Riss & Co., Inc. v. Feldman* (D. C. Mun. App. 1951, 79 A. 2d 566).

AMOUNT INVOLVED

Municipal Court of the District of Columbia does not have exclusive jurisdiction over civil actions in which the claimed value of personal property involved or damages claimed exceed the sum of \$3,000, exclusive of interest and costs.

In action to enjoin union from expelling member, where member who was employed in a union shop and might be discharged by his employer for nonmembership in union, was earning \$137.25 per week, and had life expectancy of about 30 years, and his expulsion from union would carry Communist stigma, value of matter in controversy was in excess of \$3,000 exclusive of interest and costs, and case was within jurisdiction of District Court. *Al Friedman v. International Association of Machinists* (1955, 95 U. S. App. D. C. 128, 220 F. 2d 808).

CONFERRING OF JURISDICTION

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed \$3,000. *Sheherazade, Inc. v. Mardikian* (D. C. Mun. App. 1958, 143 A. 2d 512).

EQUITABLE POWER

Municipal Court for District of Columbia has equitable as well as legal powers, but its jurisdiction in any civil action is limited by statutory jurisdictional amount. *Sydney Hirshon v. Joseph M. Whelan etc.* (D. C. Mun. App. 1955, 113 A. 2d 484, aff'd 232 F. 2d 339).

The Municipal Court for District of Columbia has exclusive jurisdiction of civil actions, legal or equitable involving personal property of a value of less than \$3,000. *Shulman v. Shulman* (D. C. Mun. App. 1952, 86 A. 2d 527).

GOVERNMENTAL FUNCTION

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *H. O'Neill Wilson v. C. O. Bittinger et al.* (1958, 104 U.S. App. D.C. 403, 262 F. 2d 714)

INCIDENTAL EQUITY POWER

The Municipal Court for the District of Columbia has exclusive jurisdiction of any action involving personal property of a claimed value not exceeding \$3,000 and of any action wherein recovery is sought for death or damages not exceeding \$3,000, and as an incident to its exclusive jurisdiction, Municipal Court has such equitable power as may be necessary to fully and completely exercise its jurisdiction. *Sheherazade, Inc. v. Mardikian* (D. C. Mun. App. 1958, 143 A. 2d 512).

JURISDICTION

Where proprietor of restaurant operated in California under a trade name had expended over \$200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded \$3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc. v. Mardikian* (D. C. Mun. App. 1958, 143 A. 2d 512).

Notwithstanding general rule that question first raised on motion for rehearing on appeal will not be considered, jurisdictional questions first raised at such time will be considered. *Sydney Hirshon v. Joseph M. Whelan, etc.* (D. C. Mun. App. 1955, 113 A. 2d 484).

In suit for an accounting where the claim was to recover \$1,000 held in trust, the Municipal Court for District of Columbia had jurisdiction of the action and possessed the necessary equitable powers to give complete relief. *Shulman v. Shulman* (D. C. Mun. App. 1952, 86 A. 2d 527).

A judgment of District of Columbia Municipal Court, awarding lessors possession of leased building for non-payment of \$520 representing two months' rent, less \$55 per month exceeding rent ceiling, for two apartments therein, was erroneous as granting reformation of ten year lease in amount and to extent exceeding court's jurisdictional limitation of \$3,000. *Psarakis v. Dukane, Inc.* (D. C. Mun. App. 1951, 84 A. 2d 543).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for \$1,000. *Robinson v. Carter et al.* (D. C. Mun. App. 1950, 77 A. 2d 174).

Rights and obligations between cooperatively owned corporation and member-tenant under proprietary lease on which member-tenant has defaulted can be determined in a summary landlord and tenant proceeding in municipal court and need not be litigated in federal District Court. *Valois, Inc. v. Thorne* (D. C. Mun. App. 1952, 86 A. 2d 530).

NEGLIGENCE CAUSING DEATH ACT

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to \$3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon v. Driggers* (D. C. Mun. App. 1956, 125 A. 2d 847).

SPLITTING OF CAUSE OF ACTION

When plaintiff, who had been employed by defendant for a term of five years, was told to look for other employment before expiration of such term and defendant ceased paying him, his right of action was one for damages for breach of contract and not for wages, and he was required to recover all present and prospective damages in one suit and could not split his cause of action and sue separately as installments came due. *P. P. Keller v. Marvins Credit, Inc., etc.* (D.C. Mun. App. 1959, 147 A. 2d 872).

STOCKHOLDER'S SUIT

Under statute authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholders' shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

§ 11-756. Transfer of actions from District Court of the United States for the District of Columbia—Amount of judgment—Power to prescribe rules and procedure—Attendance of witnesses.

(a) If, in any action, other than an action for equitable relief, pending on the effective date of this section or thereafter commenced in the United States District Court for the District of Columbia, it shall appear to the satisfaction of the court at any time prior to trial thereof that the action will not justify a judgment in excess of \$3,000, the court may certify such action to the municipal court for the

District of Columbia for trial. The pleadings in such action, together with a copy of the docket entries and of any orders theretofore entered therein, shall be sent to the clerk of the said Municipal Court, together with the deposit for costs, and the case shall be called for trial in that court promptly thereafter; and shall thereafter be treated as though it had been filed originally in the said Municipal Court, except that the jurisdiction of that court shall extend to the amount claimed in such action, even though it exceed the sum of \$3,000.

(b) The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure. Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After September 16, 1938, all laws in conflict therewith shall be of no further force or effect: *Provided, however,* That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia; nor shall this subchapter and subchapter III or any section thereof in any way repeal or modify the provisions of sections 11-801 to 11-820, establishing said small claims and conciliation branch.

(c) The Municipal Court for the District of Columbia shall have the power to compel the attendance of witnesses from any part of the District of Columbia by attachment, and any judge thereof shall have the power in any case or proceeding whether civil or criminal to punish for disobedience of any order, or contempt committed in the presence of the Court by a fine not exceeding \$50 or imprisonment not exceeding thirty days. (Apr. 1, 1942, 56 Stat. 193, ch. 207, § 5; June 29, 1953, 67 Stat. 108, ch. 159, § 410; as amended July 26, 1956, 70 Stat. 676, ch. 744, § 1.)

AMENDMENTS

1956—The act of July 26, 1956, cited to text, amended the first sentence of this section to read as above set out.

1953—Act of June 29, 1953 added the words "in any case or proceeding whether civil or criminal" to subsection (c) following the word "punish."

CROSS REFERENCE

Act of July 25, 1958, 72 Stat. 415, Pub. L. 85-554, amends sections 1331 and 1332 of title 28 of the U. S. Code so as to raise the minimum jurisdictional requirements of district courts, from \$3,000.00 to \$10,000.00 and said sections are also amended in other respects.

NOTES TO DECISIONS

ABUSE OF DISCRETION

District Court did not abuse its discretion in certifying personal injury suit to Municipal Court for District of Columbia for trial on ground that defense counsel in transferred cases frequently argue that the damages in excess of \$3,000 should not be awarded and point to District Court's order as indicating that such was already

established opinion of district judge, since plaintiff would be entitled to receive instruction that jury should disregard any such argument and might award damages in such amount as it should find plaintiff was entitled to receive up to the amount claimed in the action. *E. T. Melton v. Capital Transit Company* (1958, 102 U. S. App. D. C. 306, 253 F. 2d 42).

In action to recover \$50,000 on account of personal injuries sustained as a result of alleged negligence of defendants, District Judge did not abuse his discretion in certifying case, to Municipal Court for District of Columbia for trial, on ground that it appeared to him that action would not justify a judgment in excess of \$3,000. *Barnard v. Schneider & District of Columbia* (1957, 100 U. S. App. D. C. 152, 243 F. 2d 258).

ARBITRARY DETERMINATION

Determination of judge of federal District Court for the District of Columbia in entering order certifying action to Municipal Court on ground judgment in excess of \$3,000 would not be justified is an exercise of discretion which will not normally be disturbed on appeal unless arbitrary, but such discretion becomes arbitrary if it has been exercised for an erroneous reason. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534).

ATTACHMENT

Where debtor was served with notice to appear in suit by creditor for balance due for merchandise sold, but failed to appear, and after default judgment was entered, an attachment entered on judgment was returned unsatisfied, and debtor was served personally with subpoena, but failed to appear for oral examination, municipal court should have granted creditor's request to issue an attachment so that debtor might be brought before court. *Hill v. McWilliams* (D. C. Mun. App. 1952, 89 A. 2d 383).

CONFERRING OF JURISDICTION

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed \$3,000. *Sheherazade, Inc. v. Mardikian* (D. C. Mun. App. 1958, 143 A. 2d 512).

DISCRETION OF COURT

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc. v. Westinghouse Electric Supply Inc., et al.* (D. C. Mun. App. 1957, 130 A. 2d 777).

DISMISSAL FOR WANT OF PROSECUTION

Where plaintiff had been told in open court that she was expected to proceed with her case on certain date and that there would be no further continuances, dismissal on that date could properly be made without there having been telephone notice on day preceding trial day as provided for by Municipal Court Rule.

Under circumstances, order dismissing action for want of prosecution and refusing to set aside dismissal were not erroneous or abuse of discretion. *Anne Marie Holland v. Capital Transit Co.* (D. C. Mun. App. 1955, 114 A. 2d 426).

ENROLLMENT OF ATTORNEYS

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin v. The Municipal Court, District of Columbia* (1956, 98 U. S. App. D. C. 339, 235 F. 2d 836).

EXCESSIVE VERDICT

In action for malicious prosecution, which action had been certified by United States District Court to Municipal Court for the District of Columbia because District Court judge felt verdict exceeding \$1,000 was not justified, and wherein jury had no evidence as to defendant's financial worth, verdict of \$5,000 compensatory damages

and \$2,500 punitive damages was, under evidence, excessive. *Irvine M. Levine v. Richard Henry Mills* (D. C. Mun. App. 1955, 114 A. 2d 546).

JUDGMENTS OF MUNICIPAL COURT

Judgments of the Municipal Court of the District of Columbia should and must be enforced in that court. *Encyclopaedia Britannica v. Jones* (1951, 101 F. Supp. 521).

JURISDICTION

Where proprietor of restaurant operated in California under a trade name had expended over \$200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded \$3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc. v. Mardikian* (D. C. Mun. App. 1958, 143 A. 2d 512).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for \$1,000. *Robinson v. Carter et al.* (D. C. Mun. App. 1950, 77 A. 2d 174).

MUNICIPAL COURT JURISDICTION, POWERS, APPEALS

Municipal Court of District of Columbia is a court of record, which has equitable jurisdiction, rule making power, and its actions are subject to review by Municipal Court of Appeals. *Encyclopaedia Britannica, Inc. v. Jones* (1951, 101 F. Supp. 5211).

ORDER OF TRANSFER APPEALABLE

Trial by District Court was a claimed right, rather than an ingredient of cause of action, and District Court's order certifying personal injury case to Municipal Court for District of Columbia for trial, on ground that action would not justify judgment in excess of \$3,000 was final and appealable. *Barnard v. Schneider & District of Columbia* (1957, 100 U. S. App. D. C. 152, 243 F. 2d 258).

REHEARING ON EXEMPTION CLAIM

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc. v. Westinghouse Electric Supply Inc. et al.* (D. C. Mun. App. 1957, 130 A. 2d 777).

§ 11-757. Authority to suspend imposition or execution of sentence.

In all cases in the Municipal Court for the District of Columbia, and in the Juvenile Court of the District of Columbia, the municipal court or the juvenile court, as the case may be, shall have power upon conviction to suspend the imposition of sentence or to impose sentence and suspend the execution thereof, if it should appear to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the municipal court may, in its discretion, place the defendant on probation as provided by section 24-102, and the juvenile court may, in its discretion, place the defendant on probation as provided by section 11-919 by section 22-903 or by section 31-207, as the case may be. (June 18, 1953, 67 Stat. 65, ch. 128; § 1.)

CROSS REFERENCE

For provisions regarding probation and suspension of sentences in the United States District Court for the District of Columbia see section 3651 of title 18, U. S. Code.

When probation may be granted, § 24-102.

PROVISIONS OF SECTION 24-102 REMAINING IN FORCE

1958—Section 2 of the act of June 20, 1958, 72 Stat. 216, Pub. L. 85-463, which repeals the provisions of section 24-102 insofar as same apply to the United States District Court for the District of Columbia, also provides that nothing in the act shall be construed to amend or repeal the provisions of sections 11-757 or 11-968. Section 1 of the act is classified to section 3651 of title 18, U. S. Code.

NOTES TO DECISIONS

APPEAL AFTER SUSPENSION OF SENTENCE

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less than \$50 review shall be by application. *Id.*

SUBCHAPTER IIA.—DOMESTIC RELATIONS BRANCH, MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

§ 11-758. Establishment.

There is hereby created in the Municipal Court for the District of Columbia a Domestic Relations Branch. (Apr. 11, 1956, 70 Stat. 111, ch. 204, § 101.)

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, makes all sections (except secs. 105, 106 and 107, classified to secs. 11-762, 11-763, 16-210, 16-220, 16-416, and 32-786) effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) (§ 11-752).

§ 11-759. Definitions.

As used in this chapter—

(a) "Branch" and "Domestic Relations Branch" mean the Domestic Relations Branch of the Municipal Court for the District of Columbia created by this chapter;

(b) "Court" means the Municipal Court for the District of Columbia and the several judges thereof. (Apr. 11, 1956, 70 Stat. 111, ch. 204, § 102.)

EFFECTIVE DATE

See section 11-758.

§ 11-760. Additional judges—Assignment.

The judges appointed to the additional positions authorized by the amendments to section 11-752 shall during their tenures of office serve as judges of the Domestic Relations Branch, but the chief judge of the court may, if he finds the work in the Domestic Relations Branch will not be adversely affected thereby assign any of said judges of the Domestic Relations Branch to perform the duties of any other judge of the court. The chief judge of the court shall also have the authority to assign

any of the other judges of the court to serve temporarily in the Domestic Relations Branch if, in the opinion of the said chief judge, the work of the Domestic Relations Branch requires such assignment. (Apr. 11, 1956, 70 Stat. 112, ch. 204, § 103 (b)).

EFFECTIVE DATE

See section 11-758.

CROSS REFERENCE

Section 103 (a) of the act of April 11, 1956, cited to text increased the number of Judges of the Municipal Court from "thirteen" to "sixteen". See section 11-752.

§ 11-761. Judges authority to appoint and remove clerks.

The Judges of the Domestic Relations Branch, with the approval of the chief judge of the court, shall have authority to appoint and remove a clerk and such other personnel as may be necessary for the operation of the branch. (Apr. 11, 1956, 70 Stat. 112, ch. 204, § 104.)

EFFECTIVE DATE

See section 11-758.

§ 11-762. Jurisdiction.

The Domestic Relations Branch and each judge sitting therein shall have exclusive jurisdiction over all actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental to such actions for alimony, pendente lite and permanent, and for support and custody of minor children; applications for revocation of divorce from bed and board; civil actions to enforce support of minor children; civil actions to enforce support of wife; actions seeking custody of minor children; actions to declare marriages void; actions to declare marriages valid; actions for annulments of marriage; the following: determinations and adjudications of property rights, both real and personal, in any action hereinabove referred to in this section, irrespective of any jurisdictional limitation imposed on the Municipal Court for the District of Columbia; and proceedings in adoption.

Nothing in this chapter shall be construed to divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any such action, application or proceeding filed in such court prior to the effective date of this section to the same extent as if this chapter had not been enacted. (Apr. 11, 1956, 70 Stat. 112, ch. 204, § 105; Sept. 9, 1959, 73 Stat. 473, Pub. L. 86-241, § 1.)

AMENDMENTS

1959—Section 1 of the act of September 1, 1959, amended the section so as to extend the jurisdiction of the court to cover the adjudication of property rights as above set out.

EFFECTIVE DATE

See section 11-758.

NOTES TO DECISIONS

AUTHORITY TO PARTITION REAL PROPERTY

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. *Erma Hogan v. John R. Hogan* (1957, 102 U. S. App. D. C. 87, 250 F. 2d 412).

BURDEN OF PROOF IN CUSTODY PROCEEDINGS

In proceeding for custody of child who had been adopted by natural mother's sister and brother-in-law and who after death of sister and brother-in-law had been living with surviving subsequent wife of brother-in-law, evidence that subsequent wife was unfit person and had not properly cared for child was admissible; nevertheless the natural mother had no burden to prove this; to impose such a burden on mother improperly transferred nature of hearing into adversary proceeding rather than a proceeding where best interests of child were paramount. *Cooley v. Washington* (D. C. Mun. App. 1957, 136 A. 2d 583).

COUNSEL FEES

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

JURISDICTION CONSTRUED

In action by divorced father for custody of minor children, wherein children's maternal grandmother who had custody of the children counterclaimed to recover the amount alleged to be owing by father under separation agreement for support of children which had been adopted by Nevada court which granted the divorce decree, the counterclaim was properly denied on ground that the Domestic Relations Branch of the Municipal Court lacked jurisdiction to award judgment on payments due under decree of a foreign court. *R. T. Hitchcock v. W. R. Thomason, W. R. Thomason v. R. T. Hitchcock* (D.C. Mun. App. 1959, 148 A. 2d 458).

WELFARE OF CHILD CONTROLLING

Where natural mother's sister and brother-in-law adopted child, the sister died and the brother-in-law died survived by his subsequent wife who disclosed no real intent to maintain child, the natural mother and subsequent wife were strangers who had no legal vested right to custody of child; the controlling consideration was welfare of child. *Cooley v. Washington* (D. C. Mun. App. 1957, 136 A. 2d 583).

In child custody proceeding before Domestic Relations Branch of District of Columbia Municipal Court, whether controversy arises between parents, parents and strangers, or between strangers, probable welfare of child is controlling consideration and all questions of superior rights are entirely subordinated. *Id.*

WIFE'S PETITION FOR SUPPORT

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

§ 11-763. Power of Court to effectuate purposes for which created.

(a) The Domestic Relations Branch is hereby vested with so much of the power as is now vested in the United States District Court for the District of Columbia, whether in law or in equity, as is necessary to effectuate the purposes of this chapter, including but not limited to, the power to issue restraining orders, injunctions, writs of habeas corpus, and ne exeat, and all other writs, orders, and decrees.

(b) The Domestic Relations Branch shall have the same power to enforce and execute judgments, orders, and decrees entered by it as is now vested in the United States District Court for the District of Columbia. Judgments of the branch shall have the same legal status as liens upon real estate as judgments of the United States District Court for the District of Columbia. (Apr. 11, 1956, 70 Stat. 112, ch. 204, § 106.)

EFFECTIVE DATE

See Section 11-758.

NOTES TO DECISIONS

COUNSEL FEES

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

PUBLICATION OF PROCESS, DEFINED

Statutory expression that service of process in a divorce action may be had "by publication" means by publication or its statutory equivalent, and therefore service of process on a nonresident defendant outside the district, in a divorce action, was valid. *Wiggins v. Wiggins* (D. C. Mun. App. 1957, 135 A. 2d 154).

WIFE'S PETITION FOR SUPPORT

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

§ 11-764. Separate Docket.

A separate docket shall be maintained for the Domestic Relations Branch. There shall be recorded in such docket the actions taken at each stage of each action and proceeding instituted or conducted in the branch. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 108.)

EFFECTIVE DATE

See section 11-758.

§ 11-765. Process.

Service of process for the Domestic Relations Branch shall be made by the United States marshal for the District of Columbia or by any of his authorized assistants. Service of process for the Domestic Relations Branch may also be had by publication in the same manner as service of process is had by publication for the United States District Court for the District of Columbia. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 109.)

EFFECTIVE DATE

See section 11-758.

NOTES TO DECISIONS

PUBLICATION OF PROCESS, DEFINED

Statutory expression that service of process in a divorce action may be had "by publication" means by publica-

tion or its statutory equivalent, and therefore service of process on a nonresident defendant outside the district, in a divorce action, was valid. *Wiggins v. Wiggins* (D. C. Mun. App. 1957, 135 A. 2d 154).

§ 11-766. Rules.

The judges of the Domestic Relations Branch, with the approval of the chief judge of the court, shall by rules prescribe the fees, charges, and costs and the forms of process, writs, pleadings, and motions, and the practice and procedure in actions and proceedings in the Domestic Relations Branch. Such rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. Except as otherwise specifically provided by such rules, the applicable Federal Rules of Civil Procedure shall govern in the branch. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 110.)

EFFECTIVE DATE

See section 11-758.

NOTES TO DECISIONS

AMENDMENT OF COMPLAINT

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone v. Slone* (D. C. Mun. App. 1957, 134 A. 2d 585).

FINDINGS OF FACT

The Domestic Relations Branch of the Municipal Court for the District of Columbia may make findings of fact at close of a plaintiff's case. *Nadell v. Nadell* (D. C. Mun. App. 1957, 131 A. 2d 921).

Where trial court announced that it was accepting plaintiff's evidence as being true and correct in considering defendant's motion to dismiss at conclusion of plaintiff's evidence, making of formal findings of fact in entering final judgment of dismissal was inconsistent and required reversal for new trial. *Id.*

MATERIAL PREJUDICE

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

PENALTY FOR FAILURE TO GIVE DEPOSITION

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

STRIKING OF PLEADING IN DIVORCE ACTION

Rule that pleadings may be stricken if person wilfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but code specifically forbids the grant of divorce on default. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

§ 11-767. Appeals.

Any party aggrieved by any final or interlocutory order or judgment entered in the Domestic Relations Branch shall have the same right of appeal available in respect to any final or interlocutory

order or judgment entered in the civil branch of the court. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 111.)

EFFECTIVE DATE

See section 11-758.

§ 11-768. Sessions.

The Domestic Relations Branch, with at least one judge in attendance, shall be open for the transaction of business every day of the year except Saturday afternoons, Sundays, and legal holidays, and, if deemed necessary, may also hold night sessions. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 112.)

EFFECTIVE DATE

See section 11-758.

§ 11-769. Jurisdiction of Juvenile Court not affected.

Nothing contained in this chapter shall be construed so as to affect or diminish the jurisdiction of the Juvenile Court of the District of Columbia, or any judge presiding therein. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 113.)

EFFECTIVE DATE

See section 11-758.

§ 11-770. Appropriation authorized.

Appropriations for expenses necessary for the operation of the Domestic Relations Branch, including personal services, are hereby authorized. (Apr. 11, 1956, 70 Stat. 113, ch. 204, § 114.)

EFFECTIVE DATE

See section 11-758.

SUBCHAPTER III.—THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

§ 11-771. Creation—Court of record—Seal—Judges—Number—Appointments—Qualifications—Tenure—Salaries—Oath—Disability—Clerk—Appointment and tenure—Duties—Salary—Other employees—Salaries.

* * * * *

Each judge, the clerk and each deputy clerk of the court may administer oaths and affirmations and take acknowledgements. (As amended, July 18, 1958, 72 Stat. 398, Pub. L. 85-539, § 1.)

AMENDMENTS

1958—Act of July 18, 1958, cited to text, amended the section by adding thereto the paragraph above set out dealing with the subject matter of administering oaths.

1955—The act of July 11, 1955, 69 Stat. 290, ch. 302, § 1, amended the section by increasing the salary of the chief judge to \$19,000 per annum and of each associate judge to \$18,500 per annum.

§ 11-772. Right to appeal—Appeal from decisions of various boards and commissions—Final order or judgment—Interlocutory orders—Appeals to United States Court of Appeals for the District of Columbia—Procedure—Printing of record or briefs on appeal—Scope of review—Retroactive effect.

* * * * *

(e) The Municipal Court of Appeals for the District of Columbia is hereby vested with exclusive jurisdiction to review, in the manner hereinafter provided, the following orders or decisions of administrative agencies of the District of Columbia—

(1) any decision of the Board of Pharmacy refusing to renew a license to practice pharmacy or refusing to renew a permit to deal in poisons for use in the arts or as insecticides under the provisions of section 2-606;

(2) any decision of the Board of Examiners in Veterinary Medicine revoking or suspending a license to practice veterinary medicine or any branch thereof under the provisions of section 2-810;

(3) any order of the Commissioners of the District of Columbia or their agent or a decision of the Commissioners denying, revoking, or suspending a motor-vehicle operator's permit under the provisions of section 40-302;

(4) any decision of the Board of Examiners and Registrars of Architects annulling or revoking a certificate to practice architecture under the provisions of section 2-1028;

(5) any order of the Commissioners of the District of Columbia denying, revoking or suspending a license for a private employment agency under the provisions of section 47-2101;

(6) any decision of the Commission on Licensure to Practice the Healing Art in the District of Columbia denying a license or a registration to practice the healing art under the provisions of section 2-129;

(7) any decision of the Nurses' Examining Board denying registration or reregistration of a nurse or school of nursing under the provisions of section 2-406;

(8) any decision of the Board of Barber Examiners refusing to issue, renew, restore, or revoking a certificate of registration as a registered barber or barber apprentice under the provisions of section 2-1110; and

(9) any final decision of the Real Estate Commission of the District of Columbia denying an application for license or suspending or revoking a license under the provisions of sections 45-1403 to 45-1418.

(f) Any person aggrieved by any such decision or order may obtain a review thereof by filing in the Municipal Court of Appeals a written petition for review praying that the decision or order be set aside. The court may by rule prescribe the form and contents of the petition and regulate generally all matters relating to proceedings on such appeals. The petition for review shall be filed in said court within such time as said court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the court upon the agency affected thereby. Within such time as may be fixed by rule of the court such agency shall certify and file in the court the original papers comprising the record or any supplementary record or in the discretion of the agency, certified copies of such papers, and the clerk of the court shall immediately notify the petitioner of the filing thereof. Upon the filing of the petition for review, the court shall have jurisdiction of the proceeding and shall have power to affirm, modify, or set aside the decision or order complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as

justice may require: *Provided, however*, That no application for review or pendency of an appeal shall operate as a stay of the operation of any such decision or order in any case where, under existing law, a stay may not be granted, nor shall such application operate as a stay in any other case unless so ordered by the Commissioners of the District of Columbia or by said court for good cause shown; and for good cause shown and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court is authorized to take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings; that all appeals shall be heard and determined upon the record of proceedings before the appropriate board or agency to be certified to this court in accordance with such rules or instructions as the court may from time to time prescribe, and the review of all decisions or orders by said court shall be limited to such issues of law or fact as are subject to review on appeal under the applicable provisions of existing law, or, if there be no statutory limitation, by such rules of law as define the scope and limitations of review of administrative proceedings, and which rules, by way of elaboration and not limitation, shall include the power of the court—

(1) so far as necessary to decision and where presented to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any agency action; and

(2) to hold unlawful and set aside agency action, findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence or facts in the record of the proceedings before the court, or (F) unwarranted by the facts.

In making the foregoing determinations, due account shall be taken of the rule of prejudicial error. Any party aggrieved by any judgment of the Municipal Court of Appeals for the District of Columbia may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit in accordance with the provisions of section 11-773. (Apr. 1, 1942, 56 Stat. 195, ch. 207, § 7; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended the section by the addition of paragraphs (e) and (f).

Section 2 of that act provided that the provisions added as amendments to the section are to apply only to decisions or orders of the agencies enumerated in paragraphs (e) and (f) rendered or entered on or after the effective date of the act.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate

Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner v. Martin, Adams and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

APPEALABLE ORDERS

Under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *W. N. Clark v. District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

APPEAL AFTER SUSPENSION OF SENTENCE

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less than \$50 review shall be by application. *Id.*

APPLICABLE ISSUES

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by statute, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc. v. Suber* (D. C. Mun. App. 1954, 104 A. 2d 252).

BASIS FOR REVOCATION OF MOTORIST'S PERMIT

Where motorist was granted a hearing to show cause why his operator's permit should not be revoked, the hearing officer was only required to find that the motorist had accumulated sufficient points to warrant revocation, that the evidence offered in mitigation was not sufficient to justify an exception, and that motorist was not a fit person to operate a motor vehicle in the District of Columbia, before he was justified in revoking motorist's permit. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1956, 124 A. 2d 301).

COMMISSION'S AUTHORITY TO SUSPEND

Where real estate broker's license was renewed on July 1, 1958, for one year and on July 2, he was served with an order of Real Estate Commission charging him with three acts of alleged misconduct occurring prior to July 1, 1958, commission had power to suspend broker's license by reason of charges of misconduct even though commission had knowledge thereof on renewal date of license. *J. H. Eiland v. J. C. Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

CONCLUSIVENESS OF FINDINGS

Where there was a direct conflict of evidence in bastardy case, question was one for trier of the facts and not for the Municipal Court of Appeals for the District of Columbia on appeal. *Harrison v. District of Columbia* (D. C. Mun. App. 1954, 103 A. 2d 204).

In action by dentist whose office formerly was in defendant's building, for damages resulting when fire extinguisher fluid was sprayed on some of plaintiff's dental equipment by defendant's employees when awning outside of plaintiff's office caught fire, evidence justified judgment adverse to plaintiff on grounds that there was no showing of negligence on defendant's part and that if defendant was negligent there was no showing that such negligence was proximate cause of damage suffered by plaintiff. *Davis v. Professional Bldg. Corp.* (D. C. Mun. App. 1954, 99 A. 2d 754).

In action by landlord for breach of oral lease, evidence sustained determination that parties had never had a meeting of minds as to terms of proposed letting. *Gruening v. Donaldson* (D. C. Mun. App. 1953, 96 A. 2d 846).

In action for injuries and property damage resulting when defendant's automobile skidded onto wrong side of road and struck plaintiff's automobile, evidence was sufficient to sustain finding that defendant was not negligent. *Simmons v. Ward* (D. C. Mun. App. 1952, 91 A. 2d 566).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use, and occupancy as dwelling by purchaser, evidence of looseness and some suspicious circumstances attending sale were by no means strong enough to require trial court or appellate court sitting in review to hold as a matter of law that there was bad faith in transaction or that purchaser had not acquired property for his own use. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

CONCURRENT SENTENCES

Where court imposed concurrent sentences based on findings of guilt on two charges of disorderly conduct and record on appeal revealed that court was justified in finding defendant guilty on one of the charges, even if evidence was insufficient to establish that he had been guilty with respect to other charges, he could not successfully complain of sentence for such other charge on appeal. *D. E. Craddock v. United States and District of Columbia* (D.C. Mun. App. 1959, 153 A. 2d 649).

CONSTRUCTION

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of \$25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled \$100, action of Municipal Court would be deemed the entering of one judgment in excess of \$50, and therefore it was not necessary for defendants to comply with statute providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than \$50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers v. District of Columbia* (1952, 90 U. S. App. D. C. 153, 194 F. 2d 336).

COSTS

Municipal Court Rule prescribing that costs shall be allowed as of course to prevailing party may be unwise and unduly restrictive but is not unreasonable as a matter of law. *Slater v. Cannon* (D. C. Mun. App. 1952, 93 A. 2d 92).

DUE PROCESS

Where motorist was granted a hearing to show cause why his motor vehicle operator's permit should not be revoked and orally stated at the hearing that the revocation would deprive him of his means of livelihood in that his occupation was that of a truck driver, motorist could not claim that he was deprived of due process on the ground that the director of vehicles and traffic failed to advise him that he was entitled to the assistance of counsel at the hearing. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

EVIDENCE

In action for damage to plaintiff's untenanted home, consisting of freezing and bursting of radiators and pipes, due to failure of defendant to deliver fuel oil to home

after it had promised to do so on day on which plaintiff had called by telephone, evidence sustained finding that contract existed between parties binding defendant to deliver oil on that day, despite fact that defendant had no record of telephone call. *Woodson Co. v. Sakran* (D. C. Mun. App. 1957, 129 A. 2d 175).

Even if landlord and subtenant had agreed as to terms of new lease between them, evidence sustained determination that parties did not intend to be bound by agreement until it was executed in formal document and that landlord's delay in executing and returning lease did violence to one of express conditions of proposed agreement. *Gruening v. Donaldson* (D. C. Mun. App. 1953, 96 A. 2d 846).

The Municipal Court of Appeals does not have power to weigh evidence or render decisions on factual disputes. *Keeffe v. Moskin Stores* (D. C. Mun. App. 1953, 95 A. 2d 336).

In action against former employee for cash and merchandise shortages, for which employee had contracted to be liable in absence of showing that shortages were caused by persons other than employee and his fellow employees, evidence was sufficient to sustain finding that former employee had breached his contract. *Id.*

In action for damage to plaintiff's automobile allegedly resulting from its collision with the open, left-front door of defendant's parked automobile, wherein defendant filed counterclaim for his damages, evidence sustained finding and judgment in defendant's favor on both claim and counterclaim. *Kuzminsky v. Wagner* (D. C. Mun. App. 1952, 87 A. 2d 411).

In action by landlord against tenant to recover possession of dwelling house on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, evidence sustained trial court's finding that plaintiff had in good faith contracted as alleged. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

In seller's action for balance on a shipment of fruit and also for share of profits in a carload of bananas which seller claimed it and buyer agreed to handle in a joint venture, evidence was sufficient to sustain findings that shipment of fruit was in fact sold by seller to buyer, that carload of bananas was subject to mutual agreement between seller and buyer under which they were to share mutually in profits or losses on joint venture, and that there was in fact a profit on transaction in which seller was entitled to share. *Spivey v. W. B. Florence Banana Co.* (D. C. Mun. App. 1951, 78 A. 2d 861).

FINDINGS AFFIRMED

Findings by trial court for landlord on questions whether landlord had breached lease by failing to make repairs properly and whether tenant was damaged by breach were not plainly wrong. *Burka v. Seidenberg* (D. C. Mun. App. 1954, 108 A. 2d 159).

FINAL ORDERS AND DECREES

With certain exceptions, jurisdiction of Municipal Court of Appeals is limited to review of final orders and judgments. An order granting a new trial in automobile accident case was not a final order and not appealable, particularly, where claim was merely that trial court had improperly exercised its acknowledged authority. *John D. Sellers and Catherine Sellers v. George A. Taylor et al.* (D. C. Mun. App. 1955, 117 A. 2d 394).

Municipal Court of Appeals for the District of Columbia has jurisdiction to review only such orders as are final. *Heller v. Edwards, et al.* (D. C. Mun. App. 1954, 104 A. 2d 528).

Test of finality within appeal statute is whether the order is one which disposes of the whole case, leaving nothing for court to do except to execute judgment it has rendered. *Id.*

GOVERNMENT A "PARTY AGGRIEVED"

For purpose of statute providing that any party aggrieved by any final order or judgment of Juvenile Court of District of Columbia may appeal therefrom, government is a "party aggrieved" by order dismissing case.

In re McDonald et al. (D.C. Mun. App. 1959, 153 A. 2d 651).

INTERLOCUTORY ORDERS

An order denying a motion for summary judgment was not a final order or judgment and was therefor not appealable. *Moyer v. Moyer* (D. C. Mun. App. 1957, 134 A. 2d 649).

Orders overruling motion to vacate order overruling a motion for summary judgment, overruling motion to dismiss, overruling motion for production of documents, and ordering plaintiff to file answer to counterclaim by specified date, were interlocutory matters and orders were not appealable. *Hankerson v. Tillman* (D. C. Mun. App. 1952, 88 A. 2d 191).

JURISDICTION

The Municipal Court of Appeals for the District of Columbia has no power of review over actions of administrative agencies of the District of Columbia except as conferred by statute, and only decisions of Board of Examiners and Registrars of Architects reviewable by such court are those which annul or revoke a certificate. *Norton v. L. M. Leisering et al., constituting of Board of Examiners etc.* (D.C. Mun. App. 1956, 125 A. 2d 56).

Where petitioner was issued certificate of registration by Board of Examiners and Registrars of Architects in 1925, and renewed such certificate in 1926, but permitted it to lapse in 1927, and took no further action with respect thereto until he unsuccessfully applied for restoration of his certificate in 1950, petitioner's certificate was not revoked, and denial of renewal thereof in 1950 and from time to time thereafter was not tantamount to a revocation which would have been reviewable by the Municipal Court of Appeals for the District of Columbia. *Id.*

Under certain circumstances, denial by Board of Examiners and Registrars of Architects of certificate of registration to architect could be tantamount to a revocation of such certificate, and, therefore, the Municipal Court of Appeals for the District of Columbia, which can review board's decision in annulling or revoking a certificate, is not completely without jurisdiction over board's renewal procedure. *Id.*

Municipal Court of Appeals for District of Columbia has no jurisdiction to review orders of Board of Revocation and Review of Hackers' Identification Licenses for District of Columbia. *Frank N. Johnson v. Board of Commissioners of the District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 161).

MISREPRESENTATION

In proceeding to review decision of Real Estate Commission suspending petitioners' licenses for period of ten days, record supported Commission's findings that petitioners had made substantial misrepresentations in advertising property in area zoned against multiple-family dwellings as having apartment, and that petitioners had demonstrated such unworthiness to act as licensed real estate brokers as to endanger interests of public. *Meyer Erhlich et ano. v. Real Estate Commission* (D. C. Mun. App. 1955, 118 A. 2d 801).

MOTION TO VACATE SENTENCE

Procedure for vacating sentence of prisoner twice sentenced by Juvenile Court of District of Columbia for non-support and claiming right to release for double jeopardy was not governed by statute relating to motion to vacate sentence of federal prisoner. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

NEGLIGENCE CAUSING DEATH ACT

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to \$3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon v. Driggers* (D. C. Mun. App. 1956, 125 A. 2d 847).

ORDERS OR JUDGMENTS

Defendant's motion to stay proceedings in Municipal Court for the District of Columbia because of pendency of defendant's own suit against plaintiffs, based on same transaction or occurrence and filed in United States District Court subsequent to commencement of Municipal Court action, did not dispose of the action, but required that it be tried on the merits, and hence such order was not appealable. *Heller v. Edwards, et al.* (D. C. Mun. App. 1954, 104 A. 2d 528).

Where the trial court dismissed three separately stated counterclaims of defendant interposed in an action brought by plaintiff landlord for rent and water charges, but instead of amending or refusing to amend, defendant appealed from order of dismissal and also filed with trial court a stipulation, signed by counsel for both parties, extending time within which counterclaims might be amended to and including five days after disposition and termination of defendant's appeal, although trial court was not a party to stipulation, order was not an "appealable order". *McChesney v. Moore* (D. C. Mun. App. 1951, 78 A. 2d 389).

ORDERS REVIEWABLE

Ordinarily an order vacating a default judgment is not final and is therefore not appealable, but when court vacates judgment after the time within which it has power to do so, vacating order is appealable. *Harco Inc. v. Greenville Steel and Foundry Co.* (D. C. Mun. App. 1955, 112 A. 2d 920).

An order refusing to vacate default judgment is final and appealable. *Id.*

PARTY AGGRIEVED

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within statute providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

PURPOSE

In paternity suit, trial judge did not err in explaining to jurors the history and purpose of the act under which the proceedings were brought. *Ford v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 838).

RECORD

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *John Henry Lambert v. Board of Commissioners of District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 926).

Where affidavits submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater v. Cannon* (D. C. Mun. App. 1952, 93 A. 2d 92).

REVIEW OF ORDER OF DIRECTOR OF VEHICLES AND TRAFFIC

Under point system which provided for assessment of points against a motorist for "moving" traffic violations, Director of Vehicles and Traffic could not accept finding of guilt under information charging motorist with traveling more than 25 miles an hour in a 25 mile zone as proof that motorist was guilty of speeding 40 miles per hour

as stated in arresting charge and therefore he could not assess points against motorist on basis of arresting charge. *Chappelle v. Board of Commissioners of District of Columbia* (D. C. Mun. App. 1954, 110 A. 2d 697).

SCOPE OF REVIEW

Board of Examiners and Registrars of Architects was not bound to accept registrant's testimony that he did not know his Maryland registration had been revoked when he gave negative response to question as to whether any of his registration certificates had ever been revoked; and, on record presented, Board could reasonably find that his response had been false. *Stone v. Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

The Municipal Court of Appeals cannot read out of an appeal case extensive testimony offered by plaintiff or assume that only defendant's evidence is worthy of belief. *Keeffe v. Moskin Stores* (D. C. Mun. App. 1953, 95 A. 2d 336).

The District of Columbia Municipal Court of Appeals cannot pass on credibility of witnesses nor weigh their testimony. *Gensberg v. Kritt* (D. C. Mun. App. 1951, 83 A. 2d 588).

SMALL CLAIMS COURT APPEALS

Review of a judgment of the Small Court Branch of the Municipal Court for the District of Columbia may be had only by the allowance by the Municipal Court of Appeals of an application for appeal. *Marvins Credit, Inc. v. General Motors Corp.* (D. C. Mun. App. 1956, 119 A. 2d 447).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *J. H. Eiland v. J. C. Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

TIME FOR APPEAL

The time for appeal commenced to run from denial of defendants' motion for rehearing of their motion to vacate a judgment taken against them without service of process or appearance by them, and the filing of a motion to reconsider denial of the motion for rehearing did not stop the running of such time. *De Foe v. National Capital Bank of Washington* (D. C. Mun. App. 1952, 90 A. 2d 242).

§ 11-773. Review of judgments in United States Court of Appeals for the District of Columbia—Procedure.

NOTES TO DECISIONS

AMBIGUOUS PLEADING

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Joseph M. Whelan, etc. v. Sydney Hirshon* (1956, 98 U. S. App. D. C. 82, 232 F. 2d 339).

§ 11-775. Disbarment of attorney—Charges.

NOTES TO DECISIONS

ENROLLMENT OF ATTORNEYS

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin v. The Municipal Court, District of Columbia* (1956, 98 U. S. App. D. C. 339, 235 F. 2d 836).

§ 11-776. Retirement of judges—Length of service—Salary—Definitions—Recall to service.

NOTES TO DECISIONS

EVIDENCE

In prosecution for negligent homicide, there was sufficient substantial independent evidence to corroborate extrajudicial admissions made by defendant to police officers after accident in which his automobile allegedly collided with pedestrian in crosswalk. *Sanderson v. United States* (D.C. Mun. App. 1956, 125 A. 2d 70).

Chapter 8.—SMALL CLAIMS AND CONCILIATION BRANCH OF MUNICIPAL COURT

§ 11-804 [18:241c]. Jurisdiction—Limited—Exclusive in certain actions—Authority of judges—Compensation.

NOTES TO DECISIONS

DISCRETION

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc., v. Hamdon* (D. C. Mun. App. 1951, 79 A. 2d 163).

§ 11-808 [18:241g]. Trial—Procedure—Pretrial settlement—Default—Disposal.

NOTES TO DECISIONS

HEARSAY EVIDENCE

Even though statute creating small claims court provided that judge should not be bound by statutory provisions or rules of practice, procedure, pleading, or evidence, police report, which contained conclusions of reporting officers and was highly prejudicial to plaintiff, was not admissible in evidence. *Levin v. Green* (D. C. Mun. App. 1954, 106 A. 2d 136).

§ 11-816 [18:241o]. Sessions.

NOTES TO DECISIONS

DISCRETION

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc., v. Hamdon* (D. C. Mun. App. 1951, 79 A. 2d 163).

Chapter 9.—JUVENILE COURT

Sec.

- 11-920. Appointment, qualifications, oath, and salary of judge.
- 11-951. Children born out of wedlock—Jurisdiction.
- 11-952. Same—Time of bringing complaint.
- 11-953. Same—Complaint.
- 11-954. Same—Apprehension of accused.
- 11-955. Same—Bond—Commitment on failure to give bond—Jury trial.
- 11-956. Same—Blood tests.
- 11-957. Same—Exclusion of public.
- 11-958. Same—Judgment; prenatal and confinement expenses; maintenance—Petition for modification of judgment; hearing—Death of child.
- 11-959. Same—Performance Bond; Commitment; Probation—Judgment; Execution.
- 11-960. Same—Voluntary acknowledgment of paternity by father.
- 11-961. Same—Concurrent jurisdiction in nonsupport cases—Failure to support illegitimate child; misdemeanor—Voluntary contributions for support.

Sec.

11-962. Same—Liability of the father's estate.

11-963. Same—New birth record upon marriage of natural parents.

11-964. Same—Reports to Bureau of Vital Statistics.

11-965. Same—Records.

11-966. Same—Construction of Statute; Appropriations.

11-967. Same—Constitutionality.

11-968. Authority to suspend imposition or execution of sentence.

§ 11-901 [18: 251]. Establishment.

NOTES TO DECISIONS

CONSTITUTIONALITY

Provision in Juvenile Court Act that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Warren G. Briggs v. United States of America* (1955, 96 U. S. App. D. C. 392, 226 F. 2d 350).

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

DUE PROCESS

Where proceedings wherein juvenile was found to have participated in law violations while on probation from Juvenile Court, were in compliance with statutory requirements, there was no denial of due process of law. *White v. Reid* (1954, 125 F. Supp. 647).

JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

NATURE OF PROCEEDINGS

A proceeding in the Juvenile Court is not a criminal proceeding. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

§ 11-902 [18: 251a]. Purpose and basic aims.

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

LEGISLATIVE INTENT

Legislative intent in enacting Juvenile Court Act was to enlarge rather than diminish safeguards already pos-

sessed by juveniles. *In re John Lawrence Poff* (1955, 135 F. Supp. 224).

Juvenile Court Act should be construed liberally in favor of welfare of child. *Id.*

NATURE OF JUVENILE COURT PROCEEDINGS

Proceedings in juvenile court, even where petition is filed, are meant to be noncriminal and nonformal in nature. *Shioutakon v. District of Columbia* (1956, 98 U. S. App. D. C. 371, 236 F. 2d 666).

NATURE OF PROCEEDINGS

A hearing in the Juvenile Court is an adjudication upon status of child in nature of guardianship imposed by State as *parens patriae* to provide care and guidance that, under normal circumstances, would be furnished by natural parents. *In re John Lawrence Poff* (1955, 135 F. Supp. 224).

PURPOSE OF ACT

Purpose of Juvenile Court Act of District of Columbia is promotion of child's welfare and state's best interest by strengthening of family ties where possible, and, when necessary, removing of child from custody of parents for his welfare or safety or protection of public, securing for his custody, care and protection as nearly as possible equivalent to that which should have been given him by his parents. *White v. Reid et al.* (1954, 126 F. Supp. 867).

PURPOSE OF DELINQUENCY PROCEEDINGS

The purpose of juvenile delinquency proceedings in Juvenile Court is not to determine question of child's guilt or innocence of crime, but to promote child's welfare and state's best interests by strengthening family ties, where possible, and removing child from his parents' custody, when necessary for his welfare or safety or protection of public, securing for him custody, care, and protection as nearly as possible equivalent to that which should be given him by his parents. *Thomas Edward Shioutakon v. District of Columbia* (D. C. Mun. App. 1955, 114 A. 2d 896).

PURPOSE OF JUVENILE COURT STATUTES

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

RULES OF CRIMINAL PROCEDURE

Rule of Criminal Procedure under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

STATUTORY PURPOSE

Congressional intent in enacting provisions of statute establishing juvenile court authorizing director of social work to investigate any complaint to determine whether interest of public or juvenile require further action was to encourage disposition of cases on social rather than on a legal basis. *Shioutakon v. District of Columbia* (1956, 98 U. S. App. D. C. 371, 236 F. 2d 666).

§ 11-903. Construction of this chapter.

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

§ 11-904 [18: 253]. Court of record—Seal—Oaths.

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

PROCEEDINGS UNDER OATH

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

§ 11-905. Terms.

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

§ 11-906 [18: 255]. Application of chapter and definitions.

NOTES TO DECISIONS

APPLICABILITY OF FEDERAL RULES

The Federal Rules of Criminal Procedure do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States v. White* (1957, 153 F. Supp. 809).

ARRAIGNMENT WITHOUT UNNECESSARY DELAY

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States v. White* (1957, 153 F. Supp. 809).

CONSTRUCTION

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of chapter relating to Juvenile Court and the section making the chapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

EVIDENCE

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care. *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, testimony of Social Service Department employee concerning her ex parte report containing résumé of her conversations with girl's physician, which conversations included privileged matter in form of interpretation of doctor's prognosis and his recommendation that girl enroll in such school was hearsay and improperly admitted, and girl's statutory right of privilege was improperly invaded. *Id.*

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

PROOF OF AGE

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

PROTECTION FROM PARENTAL NEGLECT

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1957, 102 U. S. App. D. C. 94, 250 F. 2d 419).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

PURPOSE OF JUVENILE COURT STATUTES

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

RIGHT TO COUNSEL

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1957, 102 U. S. App. D. C. 94, 250 F. 2d 419).

Juvenile Court is required to advise juvenile of right to counsel or to assure itself that such right has been intelligently waived. *Shioutakon v. District of Columbia* (1956, 93 U. S. App. D. C. 371, 236 F. 2d 666).

The rights of a child, defined by statute as person under 18 years old, with respect to representation by counsel at delinquency hearing in Juvenile Court are not the same as those of any person, whether infant or adult, subjected to criminal prosecution.

A hearing in Juvenile Court to determine whether a child is delinquent is not criminal or penal in character, but adjudication on status of child in nature of guardianship imposed by state as *parens patriae* to provide child

care and guidance normally furnished by child's natural parents. *Thomas Edward Shioutakon v. District of Columbia* (D. C. Mun. App. 1955, 114 A. 2d 896).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, where daughter had retained counsel, permitting another attorney, who represented mother's interests, to enter an appearance for daughter was prejudicial error, especially in view of fact that attorney representing mother was permitted to make hearsay statement concerning conversation with girl's personal physician, thereby divulging information of privileged nature. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

RIGHT TO JURY TRIAL

A proceeding in which infant children were found to be without adequate parental care and were committed to Board of Public Welfare was a statutory proceeding to determine best interests of children and was not a criminal or common-law proceeding, and neither children nor their mother had a constitutional right to jury trial. *In re Lambert* (D. C. Mun. App. 1952, 86 A. 2d 411).

SUFFICIENCY OF EVIDENCE

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

"WILLFUL" DEFINED

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

§ 11-907 [18:256]. Jurisdiction—Original and exclusive.

1. *Children*.—Except as herein otherwise provided, the court shall have original and exclusive jurisdiction of all cases and in proceedings:

(a) Concerning any child coming within the terms and provisions of this chapter.

(b) Concerning any person under 21 years of age charged with having violated any law, or violated any ordinance or regulation of the District of Columbia, prior to having become 18 years of age, subject to appropriate statutes of limitation.

(c) To determine the paternity of any child alleged to have been born out of wedlock and to provide for his support in accordance with the provisions of sections 11-951 to 11-967; in which cases the respondent shall be entitled to jury trial unless he shall voluntarily waive such right and request trial by the court.

(d) To determine the custody or guardianship of the person of any child coming within the provisions of this chapter.

Nothing contained herein shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when such custody is incidental to the determination of causes pending in such courts.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes 21 years of age unless discharged prior thereto: *Provided, however*, That nothing herein

contained shall affect the jurisdiction of other courts over offenses committed by such child after he reaches the age of 18.

2. *Adults*.—The court shall have original and exclusive jurisdiction to determine cases of adults charged with wilfully contributing to, encouraging, or tending to cause by any act or omission any condition which would bring a child within the provisions of this chapter. The court shall have concurrent jurisdiction with the District Court of the United States for the District of Columbia in all cases arising under sections 31-201 to 31-213 or under sections 22-902 to 22-905. Nothing herein shall be construed as having the effect of limiting the jurisdiction of said court in matters arising under sections 36-201 to 36-227. (June 1, 1938, 52 Stat. 596, ch. 309, § 6; July 2, 1940, 54 Stat. 735, ch. 525; Jan. 11, 1951, 64 Stat. 1240, ch. 1225, § 1.)

COMPILER'S NOTE

This section has been carried forward to this Supplement so as to reflect changes to subsection (c) made by the act of January 11, 1951, cited to text, which repealed sections 11-943 to 11-950 and enacted sections 11-951 to 11-967 in their stead. Also to correct an error of omission contained in part 2 of the section as set out in the 1951 edition of the code which omitted reference to sections 31-201 to 31-213 of the code.

This section is somewhat similar to title 18, § 258, of the 1929 Code.

AMENDMENTS

The act of 1940 added the last sentence to subsection "2. Adults."

CROSS REFERENCES

Commitment as feeble-minded person, § 32-620.

Designation of officers to take bonds and collateral, § 23-610.

Enforcement of laws for compulsory school attendance, § 31-213.

Enforcement of laws governing professional bondsmen, § 23-612.

Jurisdiction of prosecutions for nonsupport of wife and minor children, § 22-903.

Provisions concerning jurisdiction, § 11-306 and notes.

REFERENCE IN TEXT

Sections 11-943 to 11-950 referred to in subsection (c) of this section have been repealed and new sections 11-951 to 11-967 substituted therefor by Act of January 11, 1951, 64 Stat. 1240, ch. 1225 §§ 3 to 19.

NOTES TO DECISION

COERCION OF JURY

In prosecution of defendant for being the father of an illegitimate child, where trial court, after submission of case to jury at 5:10 p. m., had the jury recalled to the courtroom at 7:20 p. m. and upon being informed it was doubtful as to whether jury might arrive at a verdict inquired as to whether there had been any change in the last hour, and upon receiving an affirmative reply stated he would like the jury to deliberate further to see if they could agree on a verdict, such conversation by trial judge did not constitute coercion of the jury. *Lawrence Marshall Gibson v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 494).

CONFESSIONS

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely

of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

CONSTITUTIONALITY

Provision in Juvenile Court Act that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Warren G. Briggs v. United States of America* (1955, 96 U. S. App. D. C. 392, 226 F. 2d 350).

CONSTITUTIONAL SAFEGUARDS

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

DOUBLE JEOPARDY

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

EVIDENCE

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care. *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

JEOPARDY

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States v. R. L. Dickerson, Jr.* (1958, 168 F. Supp. 899).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

NATURE OF PROCEEDINGS

The Juvenile Court Act did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

A proceeding in the Juvenile Court is not a criminal proceeding. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

REHEARING AFTER DISMISSAL

Rule that Juvenile Court Act itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

WAIVER OF JURISDICTION

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that

authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States v. R. L. Dickerson, Jr.* (1958, 168 F. Supp. 899).

§ 11-908 [18:257]. Information—Investigation—Petition—Contents.

NOTES TO DECISIONS

APPLICABILITY OF FEDERAL RULES

The Federal Rules of Criminal Procedure do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States v. White* (1957, 153 F. Supp. 809).

ARRAIGNMENT WITHOUT UNNECESSARY DELAY

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States v. White* (1957, 153 F. Supp. 809).

JUDICIAL NOTICE

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States v. White* (1957, 153 F. Supp. 809).

JURISDICTION

Where petition in Juvenile Court in District of Columbia to have infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, recited that children were then in custody of the Board, and there was no evidence that the children were not residents of the District, and their father was a resident of the District, Juvenile Court would be deemed to have had jurisdiction of children. *In re Lambert et al.* (1953, 92 U. S. App. D. C. 104, 203 F. 2d 607).

RIGHT TO COUNSEL

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1957, 102 U. S. App. D. C. 94, 250 F. 2d 419).

The right to be heard when personal liberty is at stake requires the effective assistance of counsel in a juvenile court as much as it does in a criminal court and juvenile has right to counsel in such a proceeding. *Shioutakon v. District of Columbia* (1956, 98 U. S. App. D. C. 371, 236 F. 2d 666).

RULES OF CRIMINAL PROCEDURE

Rule of Criminal Procedure under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

§ 11-909 [18:258]. Summons—Notice—Custody of the child.

NOTES TO DECISIONS

GENERAL APPEARANCE

Attorney's entry of appearance for mother in proceeding in Juvenile Court in District of Columbia wherein infant children were found to be without adequate parental care and were committed to Board of Public Welfare constituted waiver by mother of any question of proper service of process on her. *In re Lambert et al.* (1953, 92 U. S. App. D. C. 104, 203 F. 2d 607).

§ 11-910 [18: 259]. Service of summons.

NOTES TO DECISIONS

WAIVER

Attorney's entry of his appearance for mother in proceeding wherein infant children were found to be without adequate parental care and were committed to Board of Public Welfare constituted waiver of any question of proper service of process on mother. *In re Lambert* (D. C. Mun. App. 1952, 86 A. 2d 411).

§ 11-912 [18: 261]. Taking child into custody—Release to parent, guardian, custodian, or probation officer—Limitation on detention without court order.

Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Public Welfare, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.

In the case of any child whose custody has been assumed by the court and pending the final disposition of the case, the child may be released in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as shall be provided by the Board of Public Welfare, subject to further order of the court.

Nothing in this chapter shall be construed as forbidding any peace officer, police officer, or probation officer from immediately taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or safety, unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter. No such child shall be held in such place of detention for any period longer than five days, excluding Sundays and holidays, unless the judge shall order such child detained for a further period. (As amended June 12, 1952, 66 Stat. 134, ch. 417, § 1.)

AMENDMENTS

The act of June 12, 1952, cited to text, added the last sentence.

NOTES TO DECISIONS

APPLICABILITY OF FEDERAL RULES

The Federal Rules of Criminal Procedure do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States v. White* (1957, 153 F. Supp. 809).

ARRAIGNMENT WITHOUT UNNECESSARY DELAY

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled

to be taken before a committing magistrate without unnecessary delay. *United States v. White* (1957, 153 F. Supp. 809).

CONFESSIONS

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

CONSTITUTIONAL SAFEGUARDS

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651)

DOUBLE JEOPARDY

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651)

JUDICIAL NOTICE

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for the District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States v. White* (1957, 153 F. Supp. 809).

NATURE OF PROCEEDINGS

The Juvenile Court Act did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

REHEARING AFTER DISMISSAL

Rule that Juvenile Court Act itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

§ 11-914. Waiver of jurisdiction in case of felony—Transfer of case.

NOTES TO DECISIONS

CONSTITUTIONALITY

Provision in Juvenile Court Act that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Warren G. Briggs v. United States of America* (1955, 96 U. S. App. D. C. 392, 226 F. 2d 350).

DUE PROCESS

Alleged violations of procedural due process after waiver of jurisdiction by Juvenile Court Judge over juvenile defendant, assuming that defendant did not intelligently waive preliminary hearing, being without counsel, was cured by return of a valid indictment by the grand jury *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

EX PARTE INVESTIGATION

District of Columbia statute relating to waiver by Juvenile Court Judge of jurisdiction over juvenile offender does not require that quasi-judicial or judicial hearing be conducted by judge before making the waiver, and the "full investigation" required by the statute can be conducted by the judge on an ex parte basis. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

FULL INVESTIGATION DEFINED

Statute of the District of Columbia providing that if child 16 years of age or older is charged with offense which would amount to a felony in case of an adult, or any child charged with offense which, if committed by adult, is punishable by death or life imprisonment, judge may, after full investigation, waive jurisdiction and order child held for trial under regular procedure of court which would have jurisdiction of such offense if committed by adult, does not require, as prerequisite to waiver, the Juvenile Court Judge personally make "full investigation" prescribed by the statute, and the only requirement is that judge be fully advised of relevant facts, by such means as are available to him through various branches of the court, so that he may intelligently exercise his discretion. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315)

JEOPARDY

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States v. R. L. Dickerson Jr.* (1958, 168 F. Supp. 899).

MOTIVE OF COURT IMMATERIAL

Where there was more than adequate rational basis in records before Juvenile Court Judge when he waived jurisdiction over juvenile offender, it was immaterial that judge may have been motivated in whole or in part by a desire to relieve the Juvenile Court of a part of its burden. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

PRESUMPTION

Juvenile Court Judge would be presumed to have acted on records before him, when he waived jurisdiction over juvenile offender. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

RIGHT TO COUNSEL

Juvenile offender had no right to be represented by an attorney when Juvenile Court Judge made investigation to determine whether to waive jurisdiction over the juvenile offender. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

WAIVER JUSTIFIED

Waiver of jurisdiction over juvenile offender by Juvenile Court Judge was amply supported, not only by summary of Director of Social Work, who reported to the judge, but also by underlying data prepared at time of juvenile offender's several appearances before Juvenile Court over period of more than two years. *United States v. S. A. Stevenson* (1959, 170 F. Supp. 315).

WAIVER OF JURISDICTION

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States v. R. L. Dickerson Jr.* (1958, 168 F. Supp. 899).

§ 11-915 [18: 264]. Hearing—Informal, general public excluded, right to jury trial—Disposal of child—Parent—Right to be heard—Order of commitment—Protection of child—Effect of evidence.

The court may conduct the hearing in an informal manner, and may adjourn the hearing from time to

time. In the hearing of any case the general public shall be excluded and only such persons as have a direct interest in the case and their representatives shall be admitted except that the judge, by rule of court or special order, may admit such other persons as he deems to have a legitimate interest in the case or the work of the court. All cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury be demanded by the child, his parent, or guardian or the court.

If the court shall find that the child comes within the provisions of this chapter, it may by order duly entered proceed as follows:

* * * * *

(2) Commit the child to the Board of Public Welfare; or to the National Training School for Boys if in need of such care as is given in such school; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of such child without expense to the public.

* * * * *

(As amended Aug. 3, 1951, 65 Stat. 154, ch. 291, § 4; June 12, 1952, 66 Stat. 134, ch. 417, § 2.)

AMENDMENTS

1952—The act of June 12, 1952, added to the second sentence the provisions allowing admission by rule of the court or special order.

1951—The act of Aug. 3, 1951, struck out from clause (2) of the section the words "National Training School for Girls or the" which preceded the words "National Training School for Boys" and substituted the word "school" for the word "schools".

NOTES TO DECISIONS

CONFESSIONS

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

CONSTITUTIONAL SAFEGUARDS

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651)

CUSTODY OF INFANT

Under Juvenile Court Act juvenile cannot be committed in civil or equitable proceedings to any institution designed for custody of persons convicted of crime. *White v. Reid et al.* (1954, 126 F. Supp. 867).

DOUBLE JEOPARDY

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

EVIDENCE

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care

In re F. E. Mullen and M. A. Mullen (D.C. Mun. App. 1958, 144 A. 2d 919).

EVIDENCE, SUFFICIENCY

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

EXHIBITION OF CHILD TO JURY

In bastardy case, motion to exhibit child to jury to show lack of resemblance to defendant was properly denied in absence of a foundation of striking or peculiar nonresemblance. *Ronald D. Hassler v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 827)

ISSUE ON APPEAL

On appeal from Juvenile Court's order denying motion to set aside its order committing a minor to Department of Public Welfare on his acknowledgment of allegations of his use of automobile without owner's consent and permit him to enter plea of not guilty on ground of violation of his constitutional rights by judge's failure to advise him of right to assistance of counsel, only determinations to be made by Municipal Court of Appeals are whether Juvenile Court proceedings were in conformity with statutory requirements and whether there was a denial of due process of law. *Thomas Edward Shioutakon v. District of Columbia* (D. C. Mun. App. 1955, 114 A. 2d 896).

NATURE OF PROCEEDING

The Juvenile Court Act did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control was not a criminal or common law proceeding but was a statutory proceeding having for its purpose determination of best interest of daughter. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

OBJECTIVE OF ACT

The objective of Juvenile Court Act is rehabilitation, not punishment, and institution to which delinquent child is sent is not penal in nature, but one for rehabilitation and training purposes. *Thomas Edward Shioutakon v. District of Columbia* (D. C. Mun. App. 1955, 114 A. 2d 896).

PRELIMINARY HEARING

Constitution does not guarantee right to preliminary hearing. *United States v. R. L. Dickerson, Jr.* (1958, 168 F. Supp. 899).

PROTECTION FROM PARENTAL NEGLECT

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1957, 102 U. S. App. D. C. 94, 250 F. 2d 419).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

REHEARING AFTER DISMISSAL

Rule that Juvenile Court Act itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial

decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

RIGHT OF APPEAL

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within statute providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

RIGHT TO COUNSEL

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1957, 102 U. S. App. D. C. 94, 250 F. 2d 419).

Where the family of a juvenile concerning whom proceedings have been instituted in juvenile court is indigent, court is required to appoint counsel. *Shioutakon v. District of Columbia* (1956, 98 U. S. App. D. C. 371, 236 F. 2d 666).

Since constitutional safeguards due accused in criminal proceeding are inapplicable in juvenile delinquency hearing, Juvenile Court judge's failure to advise minor, charged with using automobile without owner's consent, of his right to assistance of counsel, was not error warranting reversal of court's order denying motion to set aside its order committing minor to Department of Public Welfare on his acknowledgment of such allegation and permit him to enter plea of not guilty. *Thomas Edward Shioutakon v. District of Columbia* (D. C. Mun. App. 1955, 114 A. 2d 896).

RIGHT TO JURY TRIAL

In proceeding in Juvenile Court in the District of Columbia to have two infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, mother of the children was not entitled under statute to jury trial. *In re Lambert et al.* (1953, 92 U. S. App. D. C. 607, 203 F. 2d 607).

A statute providing that court shall hear and determine all cases of children without a jury, unless a jury be demanded by the child, his parent, or guardian or the court, does not enlarge the right to trial by jury in all cases of children, but only preserves it where a constitutional right to jury trial exists provided seasonable demand therefor is made. *In re Lambert* (D. C. Mun. App. 1952, 86 A. 2d 411).

RULES OF CRIMINAL PROCEDURE

Rule of Criminal Procedure under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651)

§ 11-916 [18:265]. Modification of judgment—Return of child to parents—Petition of parent.

NOTES TO DECISIONS

CONFESSIONS

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

CONSTITUTIONAL SAFEGUARDS

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

DOUBLE JEOPARDY

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

NATURE OF PROCEEDINGS

The Juvenile Court Act did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

REHEARING AFTER DISMISSAL

Rule that Juvenile Court Act itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

§ 11-919 [18: 268]. Procedure in adult cases—"Offense" defined—Penalty—Right to jury trial.

CROSS REFERENCE

Suspension of sentence in cases in Juvenile Court, § 11-968.

NOTES TO DECISIONS

CONSTRUCTION

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of chapter relating to Juvenile Court and the section making the chapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

PROOF OF AGE

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

PURPOSE OF JUVENILE COURT STATUTES

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

SUFFICIENCY OF EVIDENCE

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

"WILLFUL" DEFINED

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 338).

§ 11-920 [18: 269]. Appointment, qualifications, oath, and salary of judge.

The judge of the court shall be appointed by the President of the United States, by and with the consent of the Senate, for a term of 6 years, or until his successor is appointed and confirmed. To be eligible for appointment as judge a person must be a member of the bar, preferably of the District of Columbia, and have a knowledge of social problems and procedure and an understanding of child psychology. The judge shall, before entering upon the duties of his office, take the oath prescribed for judges of courts of the United States. The salary of the judge shall be \$17,500 per annum. (June 1, 1938, 52 Stat. 601, ch. 309, § 19; as amended July 11, 1955, 69 Stat. 290, ch. 302, § 4.)

AMENDMENTS

1955—The act of July 11, 1955, cited to text, amended the last sentence to read: "The salary of the judge shall be \$17,500 per annum".

§ 11-924 [18: 273]. Duties and powers of the department of probation.

COMPILER'S NOTE—RETURN OF ABSCONDING PROBATIONERS

The Appropriation Act of June 12, 1940, 54 Stat. 307, ch. 333, § 1, provides: "The disbursing officer of the District of Columbia is authorized to advance to the chief probation officer of the juvenile court upon requisition previously approved by the judge of the juvenile court and the auditor of the District of Columbia, sums of money not to exceed \$50 at any one time, to be expended for transportation and traveling expenses to secure the return of absconding probationers, and to be accounted for monthly on itemized vouchers to the accounting officer of the District of Columbia."

Act June 19, 1948, 62 Stat. 545, ch. 555, § 1, contained a similar provision to Act June 12, 1940, except that prior stipulation for accounting monthly on itemized vouchers to the accounting officer of the District of Columbia was not included. To the same effect: Act June 29, 1949, 63 Stat. 303, ch. 279, § 1; Act July 18, 1950, 64 Stat. 347, ch. 467, § 1; Act Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; Act July 5, 1952, 66 Stat. 391, ch. 576, § 11; Act July 31, 1953, 67 Stat. 295, ch. 299, § 11; Act of July 1, 1954, 68 Stat. 394, ch. 449, § 10; Act of July 5, 1955, 69 Stat. 262, ch. 272, § 9.

§ 11-926 [18: 275]. Physical and mental examinations and treatment of child.

CROSS REFERENCE

Services of a psychiatrist and psychologist available to officers of Juvenile Court designated by Judge, § 24-106.

§ 11-927 [18: 276]. Place of detention of child.

NOTES TO DECISIONS

TERM AND PLACE OF DETENTION

In view of the District of Columbia Juvenile Court Act, statute authorizing Attorney General to designate places of confinement limits his power in respect to juveniles to designating institutions where special facilities are provided for training and care. *White v. Reid* (1954, 125 F. Supp. 647).

§ 11-929 [18: 278]. Records—Inspection limited—Penalties.

(a) The court shall maintain records of all cases brought before the court. Such records shall be withheld from indiscriminate public inspection but shall be open to inspection only by respondents, their parents or guardians and their duly authorized attorneys, and by any institution or agency to which a

child may have been committed pursuant to section 11-915. Such records may, pursuant to rule of court or special order of the court, be inspected by other interested persons, institutions and agencies. As used in this subsection, the word "records" includes notices filed with the court by arresting officers pursuant to section 11-912, the court docket and entries therein, the petitions, complaints, informations, motions and other papers filed in any case, transcripts of testimony taken in any case tried by the court and findings, verdicts, judgments, orders and decrees, and other writings filed in proceedings before the court, other than social records.

(b) The records made by officers of the court pursuant to sections 11-908 and 11-924, referred to in this section as social records, shall be withheld from indiscriminate public inspection, except that such records or parts thereof shall be made available by rule of court or special order of court to such persons, governmental and private agencies, and institutions as have a legitimate interest in the protection, welfare, treatment, and rehabilitation of the child, and to any court before which any such child may appear. The judge may also provide by rule or special order that any such person or agency may make or receive copies of such records or parts thereof. No person, agency, or institution which has received records or information under this section may publish or use them for any purpose other than that for which they were received.

(c) It shall be unlawful, except for purposes for which records, parts thereof, or information therefrom have been released pursuant to section 11-929 or except for purposes thereafter permitted by special order of court, and in accordance with any applicable rules of court, for any person or persons to disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any information concerning any juvenile before the court, directly or indirectly derived from the records, papers, files, or communications of the court, or acquired in the course of the performance of official duties.

(d) Any person or persons who shall violate subsection (c) of this section shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days, or by both. Prosecutions for violations of subsection (c) of this section shall be brought in the name of the District of Columbia in the Municipal Court for the District of Columbia by the Corporation Counsel or any of his assistants. (As amended June 12, 1952, 66 Stat. 134, ch. 417, § 3.)

AMENDMENTS

1952—The act of June 12, 1952, completely revised the section, setting out procedures for examining records and penalties for violations thereof.

§ 11-939 [18:288]. Fines to be paid to clerk—Deposit of receipts—Statements.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the

Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The function of the Auditor in connection with the itemized statement of deposits described in the foregoing section was transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 11-940 [18:289]. Audit of accounts.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The function of the quarterly audit of accounts of the Juvenile Court was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§§ 11-943-950. Repealed. January 11, 1951, ch. 1225, § 1, 64 Stat. 1240.

Sections related to the support and maintenance of bastards in the District of Columbia and are now covered by sections 951-967 of this chapter.

NOTES TO DECISIONS UNDER FORMER LAW (FORMER SECTION 11-944)

EXAMINATION BY ASSISTANT CORPORATION COUNSEL MANDATORY

Statute requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

EXAMINATION UNDER OATH

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by statute. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

WAIVER

Where statute requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

§ 11-951. Children born out of wedlock—Jurisdiction.

The juvenile court of the District of Columbia is hereby given jurisdiction of all cases arising under sections 11-951 to 11-967. Proceedings shall be instituted in the name of the District of Columbia and prosecution upon information shall be by the

Corporation Counsel for the District of Columbia or any of his assistants. (Jan. 11, 1951, 64 Stat. 1240, ch. 1225, § 3.)

REPEAL

Section 1 of act January 11, 1951, repealed the act "An Act to provide for the support and maintenance of bastards in the District of Columbia" approved June 18, 1912 (37 Stat. 134), as amended February 22, 1921 (41 Stat. 1144) and March 16, 1926 (44 Stat. 208).

SHORT TITLE

Section 2 of the act January 11, 1951, provided that the act may be cited as "An Act Relating to Children Born Out of Wedlock".

NOTES TO DECISIONS

ATTORNEYS

In child support proceeding against putative father in which complaining witness, on direct examination, testified that defendant had made contributions of food and clothing to children within one year preceding institution of proceeding, but on cross-examination, complaining witness denied having made contradictory statements regarding such contributions at preliminary hearing before another judge, defendant's attorney was competent to testify as to what complaining witness had said at preliminary hearing without withdrawing from case. *Ford v. District of Columbia* (D. C. Mun. App. 1953, 96 A. 2d 277).

EVIDENCE

In illegitimacy case in Juvenile Court of District of Columbia, reception in evidence of child's birth certificate containing statements as to name of father, offered for apparent purpose of impeaching complaining witness' testimony that defendant was father of child was not error where the certificate actually did not impeach complaining witness in view of such witness' explanation as to the making of the certificate. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

EVIDENCE ON APPEAL

Evidence supported finding that defendant was father of child born out of wedlock. *Stone v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 841).

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Id.*

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

It is not the function of the Municipal Court of Appeals, on appeal from Juvenile Court in proceeding involving paternity of an illegitimate child, to reweigh the evidence or test the credibility of witnesses. *Bragg v. District of Columbia* (D. C. Mun. App. 1953, 98 A. 2d 784).

EXAMINATION BY ASSISTANT CORPORATION COUNSEL MANDATORY

Statute requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

EXAMINATION UNDER OATH

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by statute. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

MOTION FOR NEW TRIAL

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 336).

MOTION TO SET ASIDE JUDGMENT

A motion by defendant to set aside judgment and withdraw plea of guilty entered in bastardy proceedings while he was not represented by counsel should have been granted where defendant testified that he had never received summons to appear, and following his arrest at 5:00 o'clock a. m. was confined without food and without communication until he was taken to court around 3:30 o'clock p. m. and that he was not aware of import of his actions. *Stallans v. District of Columbia* (D. C. Mun. App. 1957, 130 A. 2d 923).

OFFER OF SETTLEMENT

Defendant's offer to pay in order to settle, prefaced by an absolute denial of liability, constituted true offer of compromise and was not admission of liability and hence, offer was inadmissible in illegitimacy proceeding in Juvenile Court of District of Columbia, notwithstanding that offer was made indirectly to complaining witness through medium of witness' brother. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

PLEA OF GUILTY WITHOUT COUNSEL

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 114).

PREJUDICIAL ERROR

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 336).

RIGHT TO COUNSEL

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 111).

VOIR DIRE EXAMINATION

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of the bastardy statute to the jury on a voir dire examination was proper. *Ferguson v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 111).

WAIVER

Where statute requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first

opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

§ 11-952. Same—Time of bringing complaint.

Proceedings to establish paternity and provide for the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father has ceased making contributions for the support of such child: *Provided, however*, That the time during which the defendant shall be absent from the jurisdiction shall be excluded from the computation of the time within which complaint may be filed. (Jan. 11, 1951, 64 Stat. 1240, ch. 1225, § 4.)

NOTES TO DECISIONS

CONSTRUCTION

The statute conferring jurisdiction on Juvenile Court of District of Columbia of proceedings to establish paternity and provide for support of illegitimate child does not give such court jurisdiction to entertain a proceeding merely to determine paternity of such child. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

EVIDENCE

In paternity suit in which support previously furnished by defendant was in issue, testimony of complaining witness that defendant paid for delivery of milk for several months was admissible over objection that best evidence rule required production of records of milk company. *Ford v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 838).

QUESTION OF FACT

In paternity suit under act providing that proceedings must be brought within 2 years after child is born, or within one year after putative father ceases to contribute to support of child, whether putative father had made contributions to support of children within year prior to bringing of the action, was question for jury. *Ford v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 838).

§ 11-953. Same—Complaint.

Any unmarried woman who is at least four months pregnant or who has been delivered of a child born out of wedlock, or any married woman who is at least four months pregnant with a child, which if born alive, may be born out of wedlock, or who has been delivered of a child born out of wedlock and who was not living with nor cohabiting with her husband during the period of time in which such child could have been conceived, may go before an Assistant Corporation Counsel for the District of Columbia at the juvenile court and accuse any man of being the father of her child and request his arrest. In case of death, disability, or incompetence of the mother, the complaint may be made by the custodian, guardian, or next friend of the child. The Complainant shall be examined under oath by an Assistant Corporation Counsel to determine the validity of the accusation. If, upon examination, there appears reasonable cause to believe that the accused person is the father of the child in question, the complaint shall be reduced to writing, verified by the Complainant, and filed with the clerk of the court; and such verified complaint

may be introduced in evidence to impeach the complaining witness in any subsequent proceedings therein. (Jan. 11, 1951, 64 Stat. 1240, ch. 1225, § 5.)

NOTES TO DECISIONS

EVIDENCE

In bastardy proceeding, it was not error to permit complainant to testify that defendant had sexual relations with her prior to period of conception. *Moses v. District of Columbia* (D. C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, evidence sustained jury's finding that defendant was the father of child born out of wedlock. *Id.*

EXAMINATION BY ASSISTANT CORPORATION COUNSEL MANDATORY

Statute requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

EXAMINATION UNDER OATH

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by statute. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

MAINTENANCE OF ACTION BY MARRIED WOMAN

A married woman who was not living with nor cohabiting with her husband during period of conception may maintain a bastardy action against the putative father. *Ronald D. Hassler v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 827).

Complainant could maintain bastardy proceeding, where it appeared that she had had sexual relations only with defendant during the possible period of conception, irrespective of whether she was in fact divorced from her husband at the time. *Id.*

MOTION FOR NEW TRIAL

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 336).

PREJUDICIAL ERROR

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 336).

PRELIMINARY EXAMINATION

No information may be filed against any man accused by mother to be father of her child until mother is first examined under oath by an assistant corporation counsel to determine validity of accusation, and examination may not be made by some other employee of corporation counsel's office. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

WAIVER

Where statute requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

§ 11-954. Same—Apprehension of accused.

Upon the filing of the complaint, the case shall be calendared forthwith for preliminary hearing. The clerk of the court shall issue a summons requiring the accused to appear in court on a day certain for such purpose, or, if deemed necessary by the court, a warrant for the arrest of the defendant shall be issued, directed to the United States marshal or the Major and Superintendent or any member of the Metropolitan Police Department of the District of Columbia, requiring the accused to be arrested and brought before the court. (Jan. 11, 1951, 64 Stat. 1241, ch. 1225, § 6.)

§ 11-955. Same—Bond—Commitment on failure to give bond—Jury trial.

The court may require the accused to enter into bond with surety in a sum not to exceed \$2,500, guaranteeing his appearance on the date set for hearing or trial. If the defendant shall fail to appear, the security for his appearance shall be forfeited and shall be applied toward the support of the child if so ordered by the court. If the defendant shall fail to post bond fixed by the court he shall forthwith be committed to the District Jail, there to remain until the date set for hearing, or until he enter into the required bond or otherwise be discharged by due process of law. In all prosecutions under sections 11-951 to 11-967 the defendant shall be entitled to, but may waive, trial by jury. In no event, however, shall final hearing take place until after the birth of the child. (Jan. 11, 1951, 64 Stat. 1241, ch. 1225, § 7.)

NOTES TO DECISIONS

CROSS-EXAMINATION

In paternity proceeding, where complaining witness had previously denied having relations with second man or being out with him or entertaining him in home during conception period, trial court's refusal to allow question asking her when she was in home with second man did not constitute improper limitation of cross-examination of complaining witness. *Goodman v. District of Columbia* (D. C. Mun. App. 1952, 88 A. 2d 319).

EVIDENCE

In District of Columbia, child should not be exhibited to jury in illegitimacy case for purpose of establishing resemblance unless there appear in child physical characteristics peculiar to father and unless resemblance is so striking as to leave no reasonable doubt as to its existence, and likewise child should not be exhibited unofficially to jurors or some of them outside the courtroom. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

INSTRUCTIONS

In bastardy proceeding, it was proper for the trial judge to explain to the jury, on its voir dire examination, the history and purpose of the legislation under

which the proceeding was instituted. *Moses v. District of Columbia* (D. C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, charge was in strict accordance with the settled law of the jurisdiction. *Id.*

In paternity suit, failure of trial judge to instruct jury concerning defendant's failure to take stand was not error, in absence of request for such instruction by defense counsel. *Ford v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 838).

PLEA OF GUILTY WITHOUT COUNSEL

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 114).

RIGHT TO COUNSEL

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 111).

Where 18 year old defendant in illegitimacy proceeding was asked, at preliminary hearing, if he wanted to get a lawyer before answering, and defendant replied that he did not, and, together with his mother, signed a waiver of right to counsel, but on day of trial no inquiry was made as to whether defendant desired attorney to represent him at that time, nor was he advised that he could have an attorney assigned to him if without funds to retain one, and where judge never inquired as to defendant's education or familiarity with court proceedings, and charge against defendant was never explained to him in any detail, nor was defendant told the penalties that would attach if he were found to be the father of the child, defendant was not fully advised of his right to counsel and his motion for new trial should have been granted. *Johnson v. District of Columbia* (D. C. Mun. App. 1953, 101 A. 2d 251).

TRIAL PROCEDURE

In child support proceeding, putative father had right to make reasonable inquiry as to whether complaining witness had made charge against defendant at insistence of board of public welfare where she had sought financial assistance. *Ford v. District of Columbia* (D. C. Mun. App. 1953, 96 A. 2d 277).

VOIR DIRE EXAMINATION

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of the bastardy statute to the jury on a voir dire examination was proper. *Ferguson v. District of Columbia* (D. C. Mun. App. 1957, 133 A. 2d 111).

§ 11-956. Same—Blood tests.

Whenever it is relevant to the prosecution or defense of an illegitimacy action, the court may, in its discretion, direct that the mother, child, and the defendant submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child, but the results of the test shall be admissible as evidence only in cases where defendant does not object to its admissibility. (Jan. 11, 1951, 64 Stat. 1241, ch. 1225, § 8.)

NOTES TO DECISIONS

BLOOD TESTS

Where putative father made no request in bastardy proceeding for tests of himself, mother, and illegitimate child, until after trial and finding that putative father was the father of the illegitimate child, court did not abuse its discretion in denying the motion for the blood tests. *Adams v. District of Columbia* (D. C. Mun. App. 1954, 109 A. 2d 141).

In a bastardy proceeding, court has authority, in its discretion, to order blood tests for putative father, mother, and illegitimate child. *Id.*

§ 11-957. Same—Exclusion of Public.

Upon trial of proceedings under sections 11-951 to 11-967 the court may exclude the general public, and shall do so at the request of either party. (Jan. 11, 1951, 64 Stat. 1241, ch. 1225, § 9.)

NOTES TO DECISIONS

TIME FOR REQUEST

Under statute providing that upon trial of proceedings to adjudge person to be father of child born out of wedlock the Court may exclude the general public and shall do so at the request of either party, there is no requirement that request must be made at outset of trial or be waived. *Hassler v. District of Columbia* (1956, 99 U.S. App. D. C. 188, 238 F. 2d 264, reversing 122 A. 2d 827).

In proceeding to adjudge defendant to be the father of a child born out of wedlock, trial court committed error in denying motion to exclude newspaper people from courtroom after counsel made such motion when during presentation of defense he observed reporter in courtroom. *Id.*

Demand to have public excluded from a bastardy proceeding must be made at the appropriate time. *Ronald D. Hassler v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 827).

Request by defendant in bastardy case, made after prosecution had concluded its case and after defense counsel had made opening statement and had called two witnesses, that public be excluded, was untimely. *Id.*

§ 11-958. Same—Judgment—(a) Judgment; Prenatal and confinement expenses; Maintenance.

If the defendant, in open court, shall acknowledge the paternity of a child born out of wedlock, or if at the trial the finding of the court or jury be against the defendant, the court in rendering judgment thereon may enter an order for the payment of the prenatal medical care and costs of the mother's confinement and expenses of childbirth in such amount or amounts as it may deem reasonable, commensurate with defendant's ability to pay. The court may also order payments for the maintenance and education of the child, commensurate with defendant's ability to pay, such payments to be made at such periods or intervals as the court directs. The court, in its discretion, may order payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia. Payments shall continue until the child reaches the age of sixteen years unless the child prior thereto be legally adopted.

(b) Petition for modification of judgment—Hearing.

The court may from time to time change or modify its order directing the amount that defendant shall pay for the maintenance and support of the child: *Provided, however,* That a hearing shall be held not less than ten days following notice in writ-

ing by the clerk of the court to the parties in interest, mailed to or left at their last known place of residence.

(c) Death of child.

In case of the death of the child before reaching the age of sixteen years, the court, upon proof thereof, may order the payment of reasonable funeral expenses, and shall terminate the order for maintenance; and any arrears which may be owing at the time of death may, in the discretion of the court, be canceled. (Jan. 11, 1951, 64 Stat. 1241, ch. 1225, § 10.)

NOTES TO DECISIONS

DOCKET ENTRY

Docket entry, in proceeding to establish paternity of an illegitimate child and to compel father to provide support, which read "Pts. and atty for deft. pres. Deft. adjudged G.", was sufficiently clear to show that defendant had been found to be the father of complainant's child, especially when defendant's counsel had admitted on oral argument that he clearly understood what the entry meant, but better practice would be for trial court to adopt form of finding or verdict adjudging defendant to be father or not father of child in question, in view of fact that proceeding is not criminal in nature. *Bragg v. District of Columbia* (D. C. Mun. App. 1953, 98 A. 2d 784).

EVIDENCE

In view of fact that statute relating to a proceeding to establish paternity of an illegitimate child and to require father to provide for child's support, includes no requirement that there be corroboration of mother's testimony in order to establish a finding of paternity, a defendant could be found to be the father of an illegitimate child, and the fact of birth could be established, by the uncorroborated testimony of the mother, where such testimony was credible, sufficiently clear, and convincing. *Bragg v. District of Columbia* (D. C. Mun. App. 1953, 98 A. 2d 784).

EVIDENCE ON APPEAL

Evidence supported finding that defendant was father of child born out of wedlock. *Stone v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 841).

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Id.*

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

EXAMINATION BY ASSISTANT CORPORATION COUNSEL
MANDATORY

Statute requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

EXAMINATION UNDER OATH

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by statute. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

FINAL ORDER

Judgment entered in Juvenile Court of District of Columbia against defendant charged with being father of illegitimate child and subsequent order of support

together constituted the final and appealable judgment, and hence appeal which was timely with respect to order was timely with respect to the final and appealable judgment. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

JUDGMENT

Although the burden is on the government to prove all material allegations in information in a proceeding to establish paternity and to require father to provide for support of an illegitimate child, fact that government did not prove that the name of an illegitimate child was as charged in the information, or that the child was a male, did not invalidate judgment requiring defendant, as the child's father, to contribute to the child's support. *Bragg v. District of Columbia* (D. C. Mun. App. 1953, 98 A. 2d 784).

ORDER TO SUPPORT

Before Juvenile Court of District of Columbia can order man to support child either man must acknowledge his paternity or there must be an adjudication of paternity. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

PROOF

Even though a proceeding to provide for support of an illegitimate child is regarded as quasi criminal in nature, failure of proof of immaterial allegations in the information does not require a reversal, especially when such points were not raised at trial. *Bragg v. District of Columbia* (D. C. Mun. App. 1953, 98 A. 2d 784).

PROOF REQUIRED BY PROSECUTION

Prosecution in bastardy case was not required to prove that child was born alive or was alive at time of trial. *Ronald D. Hassler v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 827).

WAIVER

Where statute requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *J. J. Kelly v. District of Columbia* (D. C. Mun. App. 1958, 139 A. 2d 512).

§ 11-959. Same—Support Payments—(a) Performance Bond; Commitment; Probation.

The court shall require the defendant to give security not to exceed \$2,500 guaranteeing payments ordered by the court. The court may, however, in its discretion, suspend the requirement of security and place the defendant on probation to the court on condition that payments be made as ordered. In default of any payments as ordered, the court may revoke probation and commit the defendant to jail for a period of not more than one year at any one time. At the expiration of a term of commitment the defendant may be discharged, but his liability to make subsequent payments or any payments in arrears in accordance with the judgment or for commitment for further default shall not thereby be affected. In lieu of commitment or as a condition of his release from jail, the court may set aside commitment and again place the defendant on probation upon such terms as the court may direct. The amount of security, if forfeited, shall be disbursed as the court in its discretion may direct.

(b) Judgment—Execution.

In event of default of payments as ordered, the court may, in its discretion, after notice by regis-

tered mail to the defendant at his last-known address, and after hearing, reduce the amount of arrears to judgment. The Juvenile Court of the District of Columbia is hereby empowered after such notice and hearing to reduce to judgment the arrears under any order hereafter entered for the support and maintenance of a child born out of wedlock, or any amounts ordered to be paid by the defendant under sections 11-951 to 11-967; and when docketed in the clerk's office of the United States District Court for the District of Columbia such judgment shall have the same force and effect as judgments of the United States District Court for the District of Columbia, and execution thereon may be effected in the same manner as upon judgments of the said district court. (Jan. 11, 1951, 64 Stat. 1242, ch. 1225, § 11.)

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 11-960. Same—Voluntary acknowledgment of paternity by father.

The putative father of a child born out of wedlock may enter into an agreement with the mother of the child, or with some other person on behalf of the child, for the support and maintenance of said child, and said agreement may be submitted to the court for ratification and approval. When said agreement is ratified and approved, the court shall issue an order incorporating the terms thereof, and payments thereunder may be received and disbursed by the court in the same manner as provided in section 11-961. The faithful performance under the terms of said agreement shall bar other remedies of the mother or any other person on behalf of the child for the support of the child, subject to the provisions of section 11-958(b) of this chapter. (Jan. 11, 1951, 64 Stat. 1242, ch. 1225, § 12.)

NOTES TO DECISIONS

OFFER OF SETTLEMENT

Defendant's unaccepted offer to pay in order to settle, prefaced by absolute denial of liability, was not a voluntary acknowledgement of paternity of child, and hence statute providing for ratification and approval by Juvenile Court of District of Columbia of agreement for sup-

port and maintenance of child by father voluntarily acknowledging paternity was inapplicable to lift offer out of rule against admissibility of offer of compromise. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

§ 11-961. Same—Support and maintenance—(a) Concurrent jurisdiction in nonsupport cases.

The juvenile court of the District of Columbia is hereby given concurrent jurisdiction with the United States District Court for the District of Columbia in all cases arising under sections 22-903 to 22-906, and the court, in its discretion, may order payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia.

(b) Failure to support illegitimate child—misdemeanor.

The provisions of sections 22-903 to 22-906, making it a misdemeanor to abandon or willfully neglect to provide for the support and maintenance of minor children in destitute or necessitous circumstances, shall also apply to any person who abandons or fails to support his illegitimate child when paternity has been established judicially or when paternity has been directly acknowledged by the putative father under oath, or indirectly acknowledged by voluntarily making contributions to the support of such child.

(c) Voluntary contributions for support.

The juvenile court of the District of Columbia is hereby authorized to accept voluntary payments for the support and maintenance of wife or minor children and to disburse the same to the person or persons for whom such contributions are paid, in the same manner as payments are accepted and disbursed under the provisions of sections 22-903 to 22-906. (Jan. 11, 1951, 64 Stat. 1242, ch. 1225, § 13.)

§ 11-962. Same—Liability of the father's estate.

In the event of the death of the defendant after paternity has been established and prior to the time the child reaches the age of sixteen years, any sum or sums due and unpaid under any order of the court at the time of defendant's death shall be a valid claim against the defendant's estate. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 14.)

§ 11-963. Same—New birth record upon marriage of natural parents.

Whenever a certified copy of a marriage certificate is submitted to the Commissioners of the District of Columbia or their designated agent, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of said child and the paternity of the child has been judicially determined or has been acknowledged by the husband before said Commissioners or their designated agent, or has been acknowledged in an affidavit sworn to by such husband before a judge or the clerk of a court of record, or before an officer of the Armed Forces of the United States authorized to administer oaths, or before any person duly authorized to administer oaths and such affidavit is delivered to said Commissioners or their designated

agent, a new certificate of birth bearing the original date of birth and the names of both parents, shall be issued and substituted for the certificate of birth then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal, and opened for inspection only upon order of the United States District Court for the District of Columbia. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 15; Apr. 23, 1958, 72 Stat. 97, Pub. L. 85-382, § 1.)

AMENDMENTS

1958—Section 1 of the act of April 23, 1958, cited to text, amended the first sentence of the section to read as above set out.

§ 11-964. Same—Reports to Bureau of Vital Statistics.

(a) Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the bureau of vital statistics of the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of said child.

(b) Upon receipt of the certificate as provided in section 11-964 (a) hereof, the Commissioners of the District of Columbia or their designated agent shall file said certificate with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of said child. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 16; Apr. 23, 1958, 72 Stat. 97, Pub. L. 85-382, § 2.)

AMENDMENTS

1958—Section of the act of April 23, 1958, cited to text, struck out from subsection (b) the phrase, "Health Officer of the District of Columbia" and substituted in its place the phrase, "Commissioners of the District of Columbia or their designated agent".

§ 11-965. Same—Records.

None of the records or proceedings in any case arising under sections 11-951 to 11-967 shall be open to inspection by anyone other than defendant or counsel of record except upon order of the court. The court, upon proper showing may, in its discretion, authorize the clerk to furnish certified copies of any such records or portions thereof to the defendant, the mother, or custodian of the child, any party in interest, or their duly authorized attorneys. The clerk is hereby authorized to furnish certified copies of such records or portions thereof upon request to the United States attorney for the District of Columbia for use as evidence in nonsupport proceedings as provided in section 11-961 and to the Bureau of Vital Statistics as provided in section 11-964 (a) hereof. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 17.)

§ 11-966. Same—Construction of statute—Appropriations.

Sections 11-951 to 11-967 shall be so interpreted as to effectuate the protection and welfare of the child involved in any proceedings hereunder, and appropriations to carry out the purposes of sections 11-951 to 11-967 are hereby authorized. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 18.)

NOTES TO DECISIONS

NATURE OF PROCEEDING

A proceeding in Juvenile Court of District of Columbia to establish paternity and provide for support of illegitimate child is not criminal proceeding intended to punish father but ultimate object of proceeding is to provide support for child. *Harrison v. District of Columbia* (D. C. Mun. App. 1953, 95 A. 2d 332).

§ 11-967. Same—Constitutionality.

If any section, subdivision, or clause of sections 11-951 to 11-967 shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of sections 11-951 to 11-967 of this chapter. (Jan. 11, 1951, 64 Stat. 1243, ch. 1225, § 19.)

§ 11-968. Authority to suspend imposition or execution of sentence.

In all cases in the Municipal Court for the District of Columbia, and in the Juvenile Court of the District of Columbia, the municipal court or the juvenile court, as the case may be, shall have power upon conviction to suspend the imposition of sentence or to impose sentence and suspend the execution thereof, if it should appear to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the municipal court may, in its discretion, place the defendant on probation as provided by section 24-102, and the juvenile court may, in its discretion, place the defendant on probation as provided by section 11-919, by section 22-903 or by section 31-207, as the case may be. (June 18, 1953, 67 Stat. 65, ch. 128, § 1.)

CROSS REFERENCES

For provisions regarding probation and suspension of sentences in the United States District Court for the District of Columbia see section 3651 of title 18, U. S. Code.

Failure to keep child at school a misdemeanor, § 31-207. Juvenile Court procedure in adult cases, § 11-910. Willful neglect or refusal to support wife or minor child, § 22-903.

PROVISIONS OF SECTION 24-102 REMAINING IN FORCE

1958—Section 2 of the act of June 20, 1958, 72 Stat. 216, Pub. L. 85-463, which repeals the provisions of section 24-102 insofar as same apply to the United States District Court for the District of Columbia, also provides that nothing in the act shall be construed to amend or repeal the provisions of sections 11-757 or 11-968. Section 1 of the act is classified to section 3651 of title 18, U. S. Code.

Chapter 12.—CORONER

§ 11-1201 [18: 321]. Appointment.

TRANSFER OF FUNCTIONS

Reorganization Order No. 51 of the Board of Commissioners dated June 29, 1953 established under the direction and control of a Commissioner, an Office of the Coroner, headed by a Coroner. The order provided that all authority vested in the Coroner shall be exercised in accordance with applicable laws, rules and regulations, and that the Office of the Coroner should perform functions as are now or may be assigned by the provisions of the District of Columbia Code. The previously existing Office of the Coroner was abolished and all of its functions and positions transferred to the new Office with the exception that all laboratory functions were transferred to the Department of Public Health. This order was

issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 11-1203 [18: 323]. Duties.

TRANSFER OF FUNCTIONS

See note under section 11-1201 concerning the Office of the Coroner.

Chapter 14.—JURIES AND JURY COMMISSIONERS

§ 11-1401 [18: 341]. Jury commission—Qualifications and appointment—Duties—Compensation—Removal.

NOTES TO DECISIONS

OATH OF OFFICE

Where grand jury commissioners took oath when they were originally appointed, fact that they did not take the oath again on their reappointment, did not render drawing of grand jury by such commissioners illegal. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

TERMS OF OFFICE

Act of District Court in appointing grand jury commissioners for full three year terms when appointed to fill positions of commissioners who died or resigned in the middle of their terms instead of for balance of predecessors' terms, was not a violation of statute providing that commissioners shall be appointed and shall serve for term of three years and until their successors are appointed and qualified, except that members first appointed shall serve for one, two, and three years respectively, as may be designated by court. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

§ 11-1402 [18: 342]. Selection of jurors.

The said jurors shall be selected, as nearly as may be, from the different parts of the District, and shall be selected, as nearly as may be, from its intelligent and upright residents. (Mar. 3, 1901, 31 Stat. 1222, ch. 854, § 199; Apr. 19, 1920, 41 Stat. 558, ch. 153; June 29, 1953, 67 Stat. 107, ch. 159, § 408.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by the addition of the words, "and shall be selected, as nearly as may be, from its intelligent and upright residents."

CROSS REFERENCE

For definition of "District" see note under § 11-332.

§ 11-1417 [18: 357]. Qualifications of jurors.

No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or a misdemeanor involving moral turpitude. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 215; June 29, 1953, 67 Stat. 107, ch. 159, § 408.)

AMENDMENTS

1953—Act of June 29, 1953, struck the words "and under sixty five" from the section so as to eliminate the requirement that jurors be under sixty-five years of age.

NOTES TO DECISIONS

PERSONS VOTING OUTSIDE DISTRICT

Voting outside District of Columbia does not ipso facto deprive voter of residency in district; and therefore it was error to exclude from jury list all persons voting outside district. *Young v. United States* (1954, 94 U. S. App. D. C. 54, 212 F. 2d 236).

§ 11-1420 [18: 360]. Exemption from jury service—Government employees qualified—Salary not diminished.

NOTES TO DECISIONS

GOVERNMENT EMPLOYEES

In action by bus passenger against bus company for injuries sustained when rear end of bus was struck by a post office department truck, there was no error in denial of bus company's request for a new jury panel based on presence of 16 government employees among the 24 prospective jurors. *United States v. D.C. Transit System, Inc., D.C. Transit System, Inc. v. M. H. Slingland et al.* (1959, 105 U.S. App. D.C. 264, 266 F. 2d 465).

The fact that fourteen members of District of Columbia grand jury, investigating world arrangements with relation to production, transportation, refining and distribution of petroleum in possible violation of federal anti-trust acts, are employees of United States Government is no valid reason for exercise of discretionary power of Federal District Court for such District to discharge grand jury. *In re Investigation of World Arrangements with Relation to Production, etc., of Petroleum* (1952, 107 F. Supp. 628).

Chapter 15.—FEES AND COSTS

§ 11-1501 [10: 1]. Compensation taxed as costs—Attorneys' agreements with clients not prohibited.

NOTES TO DECISIONS

ATTORNEY'S FEES

Where bailee of china for hire misplaced it through carelessness, deprived bailor of its use for over two years, unjustifiably refused to deliver it to bailor for four or five months more after discovering its whereabouts in bailee's warehouse, and finally delivered china to bailee only when about to be ordered to do so by court after trial of bailee's action to recover damages from bailee for wrongful detention thereof, bailor was entitled to recover for his reasonable expenses and time lost on trip, made by him at time of trial because of bailee's refusal to deliver china to bailor unconditionally, and such part of his counsel fees as could be allocated to counsel's efforts to regain possession of china before trial, if such trip and efforts were reasonably necessary to regain property. *Boiseau v. Morrisette* (D. C. Mun. App. 1951, 78 A. 2d 777).

COSTS IN PROBATE PROCEEDINGS

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *G. A. Adlung, Executors, etc. v. A. E. Gotthardt et al.* (1958, 103 U.S. App. D.C. 195, 257 F. 2d 199).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

§ 11-1503 [10: 3]. Fees appertaining to the probate court.

NOTES TO DECISIONS

COSTS IN PROBATE PROCEEDINGS

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *G. A. Adlung, Executors, etc. v. A. E. Gotthardt et al.* (1958, 103 U.S. App. D.C. 195, 257 F. 2d 199).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

§ 11-1509 [10: 9]. Clerk's fees in the United States District Court for the District of Columbia.

For filing the following-named cases and for all services to be performed therein, except as otherwise

provided herein, the clerk shall charge and collect the following fees:

Actions at law, \$10; suits in equity, \$10; lunacy cases, \$10; deportation cases, \$10; requisition cases, \$10; habeas corpus cases, \$10; plea of title cases, \$10; District Court cases, \$15; condemnation cases, \$15; libel cases, \$15; feeble-minded cases, \$7.50; adoption cases, \$5; change of name cases, \$5; intervening petitions in any case, \$5; cases substituting trustees, \$4; docketing judgments of the municipal court, \$2.50; and limited partnership cases, \$3.

Upon the perfecting of any appeal to the United States Court of Appeals for the District of Columbia there shall be charged and collected by the clerk from the party or parties prosecuting such appeal an additional fee in said suit or proceeding of \$5.

For each additional trial or final hearing, upon a reversal by the United States Court of Appeals for the District of Columbia, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, there shall be charged and collected by the clerk from the party or parties securing such reversal, new trial, or rehearing the further sum of \$5: *Provided, however,* That the clerk shall not be required to account for any such fee not collected by him in criminal cases: *Provided further,* That nothing herein contained shall prohibit the court from directing by rule or standing order the collection, at the time the services are rendered, of the fees herein enumerated from either party, but all such fees shall be taxed as costs in the respective cases.

In any case where attachments, executions, scire facias proceedings, or rules are issued the following fees shall be charged and collected by the clerk in addition to the fees hereinbefore provided: For each writ of attachment, \$1, and each copy, \$1; for each writ of execution, \$1.50; for each writ of scire facias, \$1, and each copy, \$1; for each rule, 50 cents, and each copy certified, 50 cents; for each writ of ne exeat, \$1; for each bench warrant, \$1; for each warrant of arrest, \$1.

That in addition to the fees for services rendered in cases hereinbefore enumerated the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

For issuing any writ or subpoena for a witness not in a case instituted or pending in the court from which it is issued, 50 cents for each writ and copy or subpoena and copy.

For filing and indexing any paper not in a case or proceeding, 25 cents.

For administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 50 cents.

For an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents.

For taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional for the stenographer.

For copy of any record, entry, or other paper and the comparison thereof, 15 cents for each folio of one hundred words.

For searching the records of the court for judgments, decrees, or other instruments, or marriage records, 50 cents for each year covered by the search and for certifying the result, 50 cents.

For making and comparing a transcript of record on appeal, 15 cents for each folio of one hundred words.

For comparing any transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words.

For administering oath of admission of attorneys to practice, \$2 each; for certificate of admission to be furnished upon request, \$2 additional.

For each marriage license, \$2.

For each certified copy of marriage license and return, \$1.

For each certified copy of application for marriage license, \$1.

For registering clergymen's authorizations to perform marriages and issuing certificate, \$1.

For each certificate of official character, including the seal, 50 cents.

For filing and recording each notice of mechanic's lien, \$1.

For entering release of mechanic's lien, 50 cents for each order of lienor; 75 cents for each undertaking of lienee.

For recording physicians', optometrists', and midwives' licenses, 50 cents each.

For the clerks' attendance on the court while actually in session, \$5 per day; and for all services rendered to the United States in cases in which the United States is a party of record, \$5.

The surplus fees collected by the clerk of the District Court of the United States for the District of Columbia shall be deposited in the treasury, to the credit of the District of Columbia and the United States in the proportions required by law. (As amended Mar. 14, 1952, 66 Stat. 24, ch. 104, § 1.)

AMENDMENTS

1952—The act of Mar. 14, 1952, struck out the following provisions from the section:

"For receiving, keeping, and disbursing money in pursuance of any statute or order of court, including cash bail or bond or securities authorized by law or order of court to be deposited in lieu of other security, 1 per centum of the amount so received, kept, and disbursed, or of the face value of such bonds or securities.", and provided:

"From and after the approval of this Act no fee shall be charged or collected by the clerk of the United States District Court for the District of Columbia for any of the services enumerated in the provision stricken by section 1 hereof, regardless of whether such services were rendered prior to or after the approval of this Act."

§ 11-1521. Advancement of money to clerk of court for payment of witness fees.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952.

The function of the Auditor in connection with approving requisitions provided for in the above section was transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was

issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in appendix to Title 1.

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

A cause of action for defamatory statements was barred after one year by statute of limitations governing actions for libel and slander, whether constituted slander, libel, or malicious interference with business. *Universal Air-line, Inc. v. Eastern Air Lines, Inc.* (188 F. 2d 993, 88 U. S. App. D. C. 219).

Chapter 16.—UNIFORM SUPPORT

Sec.

- 11-1601. Purpose—Effective date.
- 11-1602. Definitions.
- 11-1603. Remedies additional to those now existing.
- 11-1604. Extent of duties of support.
- 11-1605. Remedies of a State furnishing support or institutional care.
- 11-1606. How duties of support are enforced—Jurisdiction in Domestic Relations Court—Proceedings commenced by filing of complaint.
- 11-1607. Contents of the complaint—Verification.
- 11-1608. Representation of plaintiff by Corporation Counsel or private counsel.
- 11-1609. Complaint on behalf of a minor—Who may bring.
- 11-1610. Duty of court when District of Columbia is initiating state.
- 11-1611. Costs and fees—Waiver of payment.
- 11-1612. Jurisdiction by arrest.
- 11-1613. Information agent—Corporation Counsel designated as.
- 11-1614. Duty of court when District of Columbia is responding state.
- 11-1615. Order of support—Bond—Contempt.
- 11-1616. Copies of orders to be transmitted to initiating state.
- 11-1617. Additional duties of the court—Receive and disburse payment.
- 11-1618. Testimony of spouse—Competency of.
- 11-1619. Application of payments—Crediting on account of other support orders.
- 11-1620. Support of illegitimate children.
- 11-1621. Effect of participation in proceeding.
- 11-1622. Appeals.
- 11-1623. Severability.
- 11-1624. Appropriations authorized.

§ 11-1601. Purpose—Effective date.

The following provisions to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law in respect thereto, shall be in effect in the District of Columbia on and after the effective date of this chapter. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 1.)

CROSS REFERENCES

See sections 11-758 to 11-770, 11-907, 11-912, 11-951 to 11-967, 16-401 to 16-422, and 22-903, for provisions relating to jurisdiction of Domestic Relations Court, Juvenile Court, laws pertaining to divorce and separation and penal provisions for failure to support wife or minor child.

EFFECT OF REORGANIZATION PLAN NO. 5

Section 25 of the act of July 10, 1957, provides as follows:

Where any provision of this Act refers to an office or agency abolished under the provisions of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act shall be construed as a limitation on the authority vested in the Commissioners by such Reorganization Plan.

EFFECTIVE DATE

Section 26 of the act of July 10, 1957, cited to text, provides that the act becomes effective 60 days after appropriations become available.

§ 11-1602. Definitions.

As used in this chapter, unless the context requires otherwise—

(a) "State" includes any State, Territory, or possession of the United States and the Commonwealth of Puerto Rico and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating State" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "Responding State" means any State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "Court" means the Domestic Relations Branch of the Municipal Court for the District of Columbia and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(e) "Duty of support" includes: (1) any duty of support imposed by statute or by common law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; (2) any duty of reimbursement imposed by law for moneys expended by a State or a political subdivision or an agency thereof for support, including institutional care; and (3) the duty imposed by section 11-1620.

(f) "Dependent" means any person who is in need of and entitled to support from a person legally liable for such support.

(g) "Plaintiff" means any person or any State or political subdivision or agency thereof, commencing a proceeding pursuant to this or a similar reciprocal law, whether on his or its own behalf, or on behalf of a dependent as herein defined.

(h) "Defendant" means any person owing a duty of support, against whom a proceeding is commenced pursuant to this or a similar reciprocal Act. (July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 2.)

NOTES TO DECISIONS

CONTROLLING LAW

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

COUNSEL FEES

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

LIABILITY WHEN MOTHER DESERTS

Fact that mother allegedly deserted father would not relieve father from obligation of supporting minor children. *A. Edmonds v. H. Edmonds* (D.C. Mun. App. 1958, 146 A. 2d 774).

WIFE'S PETITION FOR SUPPORT

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

§ 11-1603. Remedies additional to those now existing.

The civil remedies herein provided are in addition to and not in substitution for any other remedies. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 3.)

§ 11-1604. Extent of duties of support.

Duties of support enforceable under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The defendant shall be presumed to have been present in the responding State during the period for which support is sought until otherwise shown. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 4.)

§ 11-1605. Remedies of a State furnishing support or institutional care.

Whenever any State or a political subdivision or agency thereof has furnished, or is furnishing support or institutional care to a dependent, it shall for the purposes of securing reimbursement of past expenditures and of obtaining continuing support, have the same right to invoke the provisions of this chapter as the dependent to whom such support or care was furnished, or is being furnished. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 5.)

§ 11-1606. How duties of support are enforced; jurisdiction in domestic relations court—Proceedings.

Proceedings to enforce duties of support initiated in the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter shall be vested in the domestic relations branch of the municipal court for the District of Columbia, which branch in exercising the jurisdiction vested in the court by this chapter, shall have all of the power and authority which is vested in the court by sections 11-752, 11-758 to 11-770, 16-210, 16-220, 16-416 and 32-786. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 6.)

NOTES TO DECISIONS

COUNSEL FEES

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

WIFE'S PETITION FOR SUPPORT

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644)

§ 11-1607. Contents of the complaint—Verification.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and of the dependents for whom the duty of support is sought to be enforced, and all other pertinent facts necessary to enable the court to determine whether a duty of support exists on the part of the defendant. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 7.)

§ 11-1608. Representation of plaintiff by corporation counsel or private counsel.

In any instance in which the Corporation Counsel of the District of Columbia is satisfied that a public support burden has been incurred or is threatened, it shall be his duty to represent the plaintiff in any proceedings arising under this chapter or a similar reciprocal Act. In all other cases the court may, in its discretion, appoint private counsel to represent the plaintiff: *Provided*, That the plaintiff may be represented by private counsel in any proceedings under this chapter at his own expense. (July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 8.)

NOTES TO DECISIONS

COUNSEL FEES

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *W. R. Britt v. M. E. Britt* (D.C. Mun. App. 1959, 153 A. 2d 644)

§ 11-1609. Complaint on behalf of a minor—Who may bring.

A complaint on behalf of a minor dependent may be brought by any person or agency as next friend of the minor, regardless of whether such person or agency has been appointed guardian of such minor. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 9.)

§ 11-1610. Duty of court when District of Columbia is initiating State.

If the court finds that a complaint initiated in the District of Columbia sets forth facts from which it appears that the defendant owes a duty of support, as defined in this chapter, and that a court of a responding State may obtain jurisdiction of the defendant, it shall so certify and shall cause to be transmitted to the court in the responding State, three copies of its certificate, three certified copies of the complaint, and three copies of this chapter. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 10.)

§ 11-1611. Costs and fees—Waiver of payment.

The complaint, when initiated in the District of Columbia, shall be accompanied by such fees and costs as may be required by the court as well as by the court of the responding State: *Provided*, That the court whether the District of Columbia be the initiating or responding State, may in its discretion direct that payment or prepayment of any part or all fees and costs incurred in the District of Columbia be waived upon the filing of an affidavit representing that the plaintiff is unable to pay the same: *Provided further*, That the court shall direct waiver of payment or prepayment of such fees and costs whenever the plaintiff is a State having a similar provision for waiver of fees, or a political subdivision or agency thereof. Nothing in this section shall be construed to deprive the court of its discretion to assess costs and fees. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 11.)

§ 11-1612. Jurisdiction by arrest.

When the court has reason to believe that the defendant may flee the jurisdiction of the responding State, it may (a) as the court of the initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State, or (b) as the court of a responding State, obtain the body of the defendant by any appropriate process. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 12.)

§ 11-1613. Information agent—Corporation counsel designated as.

The Corporation Counsel of the District of Columbia is hereby designated as the reciprocal information agent under this chapter and it shall be his duty to transmit a copy of this chapter and any subsequent changes therein to the State information agency of every other State which has adopted this or a substantially similar Act, and to maintain a registry of the names and addresses of the courts having jurisdiction of such proceedings in other

States. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 13.)

§ 11-1614. Duty of the court when the District of Columbia is responding State.

(a) When the court receives from the court of an initiating State certified copies of a complaint or other proceedings containing the essential allegations of a complaint, under whatever name it may be known, and a certificate similar to that required by section 11-1610, it shall docket the cause and refer the matter to the Corporation Counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of the defendant in order to carry out the provisions of this chapter.

(b) If the court is unable to obtain jurisdiction of the defendant due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall hold the case pending receipt of more accurate information or an amended complaint from the court in the initiating State. (July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 14.)

§ 11-1615. Order of support—Bond—Contempt.

If the court finds a duty of support as defined by this chapter it may order the defendant to pay such amounts under such terms and conditions as the court may deem proper. The court may require the defendant to furnish recognizance in the form of a cash deposit or bond, and may punish a defendant who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding cognizable by the court. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 15.)

NOTES TO DECISIONS

ABUSE OF DISCRETION

In a proceeding under the Reciprocal Enforcement of Support Act, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. *Dr. J. Menetrez v. A. Menetrez* (D.C. Mun. App. 1959, 147 A.2d 772).

§ 11-1616. Copies of orders to be transmitted to initiating State.

The court shall cause to be transmitted to the court of the initiating State a certified copy of all orders of support or for reimbursement therefor entered by it. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 16.)

§ 11-1617. Additional duties of the court—Receive and disburse payments.

The court shall have the additional duty, which may be carried out by the clerk of the court, to receive payments made pursuant to order of the court by defendants within the District of Columbia or transmitted by the court of a responding State, and to disburse the same in accordance with the order of the court, and upon request of the court of an initiating State shall furnish to that court a certified

statement of all payments received and disbursed in a particular case. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 17.)

§ 11-1618. Testimony of spouse—Competency of.

In all proceedings arising under this chapter, husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 18.)

§ 11-1619. Application of payments—Crediting on account of other support orders.

No order of support entered by the court in any proceeding arising under this chapter shall supersede any previous order of support entered in a divorce or separate maintenance action, or any other proceedings, but the amounts for a particular period paid pursuant to either order, when verified, shall be credited against amounts accruing or accrued for the same period under both. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 19.)

§ 11-1620. Support of illegitimate children.

The natural father of an illegitimate child shall have the duty to support such child until the age of sixteen years (a) when paternity has been established by judicial process, or (b) when paternity has been directly acknowledged by the putative father under oath. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 20.)

§ 11-1621. Effect of participation in proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding. (July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 21.)

§ 11-1622. Appeals.

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the civil branch of the municipal court for the District of Columbia. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 22.)

§ 11-1623. Severability.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 23.)

§ 11-1624. Appropriations authorized.

Appropriations for expenses necessary for carrying out the purposes of this chapter, including additional personal services for the court and for the Office of the Corporation Counsel, are hereby authorized. (July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 24.)

TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING

Chapter 1.—ABATEMENT AND REVIVOR

§ 12-101 [24: 31]. Actions survive in favor of or against representatives of deceased party—Injury to person or reputation—Exception.

NOTES TO DECISIONS

ACTIONS WHICH ALWAYS SURVIVED

The statute providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of deceased has effect of extending the quality of survival to those actions which did not survive under the common law, and does not preclude an heir from suing upon a cause of action which had always survived. *Thomas v. Doyle et al.* (1950, 88 U. S. App. D. C. 95, 187 F. 2d 207).

AMENDED COMPLAINT

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator would be allowed to amend complaint to increase damages claimed from \$46,500 to \$71,500. *William Mitchell, Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

AMENDMENT OF COMPLAINT

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act and the other under the Survival Act, the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *D. Sornborger, Executrix, etc., v. District Dental Laboratory Inc., et ano.* (1959, 105 U.S. App. D.C. 290, 266 F. 2d 694).

CHANGE OF VENUE

Under statute providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under District of Columbia survival and death statutes, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *William Mitchell, Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

DAMAGES

Where deceased died within an hour after accident and no pecuniary damages were sustained, only nominal damages were recoverable under survival of action statute, and award of \$300 for deceased's estate would be reduced to \$1. *Coleman v. Moore et al.* (1952, 108 F. Supp. 425).

DAMAGES IN DEATH ACTIONS

Generally, the law seeks to award compensation, and no more, for personal injuries negligently inflicted, but injured person may usually recover in full from a wrongdoer regardless of anything he may get from a "collateral source" unconnected with the wrongdoer. *Hudson v. Lazarus* (1954, 95 U. S. App. D. C. 16, 217 F. 2d 344).

In personal injury action, value of all reasonably necessary medical and hospital services furnished plaintiff's decedent without charge by naval hospital because he was veteran should have been included in determining amount of damages. *Id.*

Disabilities sustained by one in automobile collision were not "pain and suffering", within exception in sur-

vival act precluding recovery for pain and suffering of decedent prior to his death. *Id.*

Where plaintiff in personal injury action died while action was pending and action was revived in name of plaintiff's administratrix, decedent's probable future earnings during his life expectancy, discounted to present worth, should have been included in determining amount of damages for permanent injuries. *Id.*

FRAUD

Complaint which alleged that defendant's marriage to plaintiff's mother, now deceased was a fraud upon mother because defendant at time of marriage ceremony, had another living wife not known to plaintiff's mother, and that deed conveying a joint interest in property owned by plaintiff's mother was executed by her to defendant as result of the purported marriage, sufficiently stated cause of action to set aside the deed on the ground of fraud. *Thomas v. Doyle et al.* (1950, 88 U. S. App. D. C. 95, 187 F. 2d 207).

INTEREST OF JUSTICE

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland to Washington, D. C. *William Mitchell, Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

LEGAL REPRESENTATIVE

The term "legal representative," as used in statute providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of the deceased, is not necessarily restricted to personal representatives of deceased but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas v. Doyle et al.* (1950, 88 U. S. App. D. C. 95, 187 F. 2d 207).

Adopted son, as only heir of mother, was her "legal representative" for purpose of suit to set aside deed to realty executed by mother during her lifetime as result of alleged fraud. *Thomas v. Doyle et al.* (1950, 88 U. S. App. D. C. 95, 187 F. 2d 207).

MEASURE OF DAMAGES

Under statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided, however, that in tort actions, such right of action shall be limited to damages for physical injury except for pain and suffering, in case either plaintiff or defendant in personal injury action dies, measure of damages becomes limited to damages for physical injury other than pain and suffering. *Soroka et al. v. Beloff* (1950, 93 F. Supp. 642).

Statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided however that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, would be construed by application of rule of *noscitur a sociis* to read as though phrased, provided however, that in action for personal injuries, right of action shall be limited to damages for physical injuries, excluding, however, pain and suffering. *Id.*

OBJECT OF STATUTE

Object of statute changing rules of survival of action upon death of party, was to expand rather than limit survival. *Soroka et al. v. Beloff* (1950, 93 F. Supp. 642).

RES JUDICATA

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison v. Garrett*. (1953, 92 U. S. App. D. C. 94, 205 F. 2d 15).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

SLANDER

Where defendant in slander action died, all rights of action survived. *Soroka et al. v. Beloff* (1950, 93 F. Supp. 642).

Chapter 2.—LIMITATION OF ACTIONS

§ 12-201 [24:341]. Periods—Recovery of Real Property—Executor's or administrator's bond—Instruments under seal—Simple contract—Property damage—Statutory penalty or forfeiture—Certain torts—Actions not specified—Persons under disabilities.

NOTES TO DECISIONS

ACCRUAL OF CAUSE OF ACTION

Action against landlord's contractor for injuries sustained by tenant due to contractor's allegedly faulty repair of stairway railing was based on negligence, founded in tort, and cause of action did not accrue, for limitations purposes, until injury resulted. *Helen Hanna, Cicero Hanna v. Annie C. Fletcher, Trustee, etc.* (1956, 97 U. S. App. D. C. 310, 231 F. 2d 469).

Even if tenant's action against landlord for injuries sustained when stair railing broke were deemed one for breach of contract, cause of action accrued at date of injury, rather than at date railing was repaired in allegedly faulty manner. *Id.*

ACTIONS TRANSFERRED FROM OTHER JURISDICTION

Where plaintiffs ceased to be employees of railroad and commenced action in United States District Court for District of Columbia against railway brotherhoods for breach of fiduciary duty to fairly represent plaintiffs in course of collective bargaining and the action in interest of justice and for convenience of parties and witnesses was transferred to Kentucky federal district court for trial, the applicable statute of limitations was the District of Columbia three-year statute and not the Kentucky five-year statute. *Hargrove et al. v. Louisville & Nashville Railroad Co., Brotherhood of Locomotive Engineers, etc.* (1957, 153 F. Supp. 681).

AMENDMENT AFTER STATUTE HAS RUN

Where streetcar passenger sued streetcar company for her injuries sustained when streetcar collided with automobile, the streetcar company filed third-party complaint against motorist on ground that motorist's negligence was cause of passenger's injuries, passenger never asserted direct claim against motorist either in passenger's complaint or by amendment thereto, jury found that streetcar company was not negligent and that motorist was negligent and third-party action was dismissed, passenger would not be permitted to amend complaint to include motorist as codefendant at a time when passenger's claim against motorist had become barred by three-year statute of limitations, notwithstanding that streetcar company had impleaded the motorist as third-party defendant prior to time that the statute had run on the passenger's claim against motorist. *E. M. Holmes v. Capital Transit Co., et ano.* (D.C. Mun. App. 1959, 148 A. 2d 788).

AMENDMENT OF PLEADINGS

Where Federal District Court, in dismissing with prejudice Count 3 of complaint containing multiple claims, except as to claim for services rendered subsequent to certain date, indicated that it tentatively agreed with defendant's contention that claims of Count 3 were barred by limitations, but did not make determinations necessary to effect finality, and no responsive pleadings were filed by defendants, and an effort was made by plaintiff to amend Count 3 before entry of final judgment of dismissal, District Court was required to exercise its discretion in determining whether plaintiff was entitled to amend Count 3. *Cassell v. Michaux* (1956, 99 U. S. App. D. C. 375, 240 F. 2d 406).

BAILMENTS

Where plaintiff delivered to defendant moneys to be held by defendant until plaintiff needed the money, transaction was in the nature of a gratuitous bailment for an indefinite time, and therefore statute of limitations did not begin to run until there was a demand by plaintiff for return of the money and a refusal or some other act of defendant inconsistent with the bailment. *Noel C. Irvine v. Frank T. Gradoville* (1955, 95 U. S. App. D. C. 263, 221 F. 2d 544).

BREACH OF WARRANTY

The limitation on actions based on the breach of a simple contract is three years. *Guthrie v. Greenfield* (D. C. Mun. App. 1954, 109 A. 2d 783).

In action by purchaser of a house for breach of warranty, contained in sales contract, that basement was guaranteed dry for one year, purchaser was entitled to be placed in same position as if there had not been any breach. *Id.*

COMMENCEMENT OF ACTION

Action for declaration that Indian had right to contract with plaintiff in respect to real property which had been allotted and inherited by the Indian was barred by statute of limitations and by laches where not brought for more than 20 years. *Spriggs v. McKay, Secretary of the Interior et al.* (1954, 119 F. Supp. 232).

In District of Columbia, statute of limitations is tolled when bill or declaration is filed and subpoena issued and delivered to marshal for service before statute has run. *Bowles v. Dixie Cab Ass'n et al.* (1953, 113 F. Supp. 324).

To toll statute of limitations, no more is ever required than filing of declaration or complaint and issuance of summons within statutory period, followed by diligence in service of summons and prosecution of suit. *Slater v. Cannon* (D. C. Mun. App. 1952, 93 A. 2d 92).

CONDITIONAL SALES CONTRACT

Though if conditional sales contract was under seal it was subject to twelve-year period of limitations, a three year limitation was applicable where seller failed to prove that buyer signed contract. *Stern Equipment Co., Inc. et al. v. Florine Pogue* (D. C. Mun. App. 1955, 117 A. 2d 447).

A plaintiff who was pressing a claim which on its face is barred by limitations, and who claims an acknowledgment or new promise in the form of a part payment has the burden of proving such fact, and a part of that burden is to establish date of payment or new promise. *Id.*

CONFLICT OF LAWS

The three-year District of Columbia limitation, and not the one-year Virginia limitation, applied to action in District of Columbia to recover for a common-law tort which occurred in Virginia, since Virginia statute of limitations does not destroy the cause of action, but merely bars bringing of the action after the statute has run. *Bell et ux. v. Kelly Motor Lines Inc.* (95 F. Supp. 682).

District of Columbia statute of limitations governed actions for enforcement in District of Columbia, of claim for \$6,000 as plaintiff's unsatisfied equity arising out of deed even though defendant's obligation, if any, had been created in New Jersey. *Filson v. Fountain* (1952, 90 U.S. App. D. C. 273, 197 F. 2d 383).

CONSTRUCTIVE NOTICE

August 16, 1946 contract for sale of land and October 7, 1946 deed identifying the property by lot and square

number incorporated means by which purchaser might have ascertained true boundaries and dimensions, and purchaser had constructive notice of public records containing precise metes and bounds of property at a time more than three years prior to his October 10, 1949 filing of action against vendor for fraud and misrepresentation as to location of rear boundary, and hence purchaser was precluded by statute of limitations from maintaining action. *Robinson v. Orem* (1952, 198 F. 2d 86).

CONTRACTS

Cause of action based on breach of implied warranty to do work in workmanlike manner would be barred by statute of limitations where breach occurred more than three years before commencement of action. *Poole v. Terminix Co. of Maryland & Washington* (D. C. Mun. App. 1951, 84 A. 2d 699).

CONTRIBUTION

Statute of limitations begins to run against right to contribution only from time of disproportionate discharge of common obligation by one of the common obligors. *Bair v. Bryant* (D. C. Mun. App. 1953, 96 A. 2d 508).

DISABILITY

Action, filed on December 3, 1952, for assault and battery allegedly committed on May 18, 1951, was barred by one year statute of limitations, irrespective of whether plaintiff was non compos mentis for period of over six months, from May 30, 1951, to December 20, 1951, and irrespective of whether such disability was caused by the assault and battery, where plaintiff claimed only that such disability arose twelve days after the injury, and not that it existed at time cause of action accrued, and where, in any event, plaintiff had almost five months within which to bring suit after his disability was removed. *Taylor v. Houston et al.* (1954, 93 U. S. App. D. C. 391, 211 F. 2d 427).

DISCOVERY OF FRAUD

Allegation in a complaint for damages predicated on fraud that there was discovery of the alleged fraud contemporaneously with filing of the complaint precluded dismissal of complaint based on bar of statute of limitations, at least for purposes of a motion to dismiss for failure to state a cause of action. *Page v. Comert et al.* (1957, 100 U. S. App. D. C. 139, 243 F. 2d 245).

In an action based on fraud, the statute of limitations begins to run, not when the cause of action accrued, but from the discovery of the facts out of which the claim arose, or from the time when the facts should have reasonably been found out in the exercise of due diligence. *White v. Piano Mart* (D. C. Mun. App. 1954, 110 A. 2d 542).

ESTOPPEL

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass v. Eiker, trading as T. E. Eiker & Co.* (D. C. Mun. App. 1957, 135 A. 2d 153).

To toll statute of limitations in regard to breach of implied warranty to do work in workmanlike manner, there would have to be some trick or connivance intended to exclude suspicion and prevent discovery of cause of action by use of ordinary diligence. *Poole v. Terminix Co. of Maryland & Washington* (D. C. Mun. App. 1951, 84 A. 2d 699).

IMPLIED WARRANTY

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement had damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole v. Terminix Co. of Maryland & Washington, Inc.* (1952, 200 F. 2d 746).

LIMITATION OF ACTIONS

Where decedent loaned defendant \$10,000 by giving him check for that amount on District of Columbia bank, in certain restaurant in District of Columbia, cause of action for recovery of indebtedness arose in District of Columbia, and three-year statute of limitations of District of Columbia was applicable in Pennsylvania Federal Court action, within Pennsylvania statute making District of Columbia limitation statute applicable if cause arose in district. *United States v. Taylor* (1956, 144 F. Supp. 15).

Where period of limitations prescribed by applicable District of Columbia law had run prior to assignment of obligation to United States, United States was barred from maintaining action on claim. *Id.*

Under Pennsylvania law, Pennsylvania courts are required to follow District of Columbia statute of limitations, if cause arose in District of Columbia, in view of Pennsylvania statute providing that when cause has been fully barred by laws of state in which it arose, such bar is complete defense to action in Pennsylvania. *Id.*

Where there is no applicable federal statute of limitations, the law of the state where the district court sits determines the period within which the suit may be brought. *Id.*

Where it was not clear that there was unreasonable delay on part of the United States in bringing suit to rescind transfers of shares of stock by trustees of charitable corporation organized in District of Columbia, suit was not barred by laches or by three-year statute of limitations. *Mount Vernon Mortgage Corporation v. United States, National Home Library Foundation v. United States* (1956, 98 U. S. App. D. C. 429, 236 F. 2d 724).

MILITARY SERVICE

Where cause of action accrued on December 8, 1948, and defendant was called to active duty as member of Organized Naval Reserves on July 28, 1950, and continued on duty for 15 months and two days, three-year statute of limitations was tolled, and time within which the action could be commenced was extended, for period of such military service, and action filed before March 11, 1953, was timely. *Bowles v. Dixie Cab Ass'n et al.* (1953, 113 F. Supp. 324).

NEW PROMISE OR ACKNOWLEDGMENT

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three year statute of limitations, notwithstanding that more than three years had then lapsed since the signing of the first note. *Garfinkle v. Needle* (1952, 91 U. S. App. D. C. 342, 201 F. 2d 202).

NON-RESIDENTS

Provision suspending running of statute of limitations while defendant who is resident of District of Columbia is out of the district, had no application to defendant who first moved to district in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and action was barred by three year statute of limitations. *Frank v. Adams* (D. C. Mun. App. 1953, 98 A. 2d 789).

QUESTIONS OF FACT

Where affidavits submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater v. Cannon* (D. C. Mun. App. 1952, 93 A. 2d 92).

REPUDIATED AGREEMENT

Where payee of two-year note paid premiums on life policies which makers had assigned as security, failure of makers ever to reimburse payee for such payments constituted, after time, repudiation of any agreement which may previously have existed to reimburse payee for payment of premiums. *Godfrey L. Munter, Sole Liquidation Trustee etc. v. William C. Lankford et ano.* (1956, 98 U. S. App. D. C. 116, 232 F. 2d 373).

Where, incident to execution of two-year note in 1935, makers assigned life policy to payee as security, and, upon expiration of policy in 1939, a maker assigned new policy, cause of action of payee upon repudiation of agreement to reimburse payee for payment of policy premiums was barred by statute of limitations, in case of action begun in 1953, especially in view of absence of waiver of statute of limitations in 1939 policy assignment. *Id.*

RESULTING TRUST

Claim for enforcement of certain interest in realty pursuant to alleged resulting trust, if not purely legal was within concurrent jurisdiction of law and equity, and statute of limitations was applicable. *Filson v. Fountain* (1952, 90 U. S. App. D. C. 273, 197 Fed. 2d 383).

SCOPE OF REVIEW

Where order of judge denying defendant's motion to dismiss on ground that action was barred by limitations was made before default and represented adjudication of a duly contested matter, such order was properly before Municipal Court of Appeals for review. *Clark v. Keese* (D. C. Mun. App. 1957, 136 A. 2d 394).

SEALED INSTRUMENTS

Where a note was signed by a corporation by its secretary-treasurer, and corporate seal was impressed through the name of the corporation and that of the secretary-treasurer, and the instrument was on a printed stationer's form headed "Promissory Note" and nowhere did the word or symbol "Seal" or "L. S." appear, and nowhere was there a recital that the instrument was "signed and sealed", intention of maker was not to create a specialty with its attendant liability for 12 years, but the seal would be deemed impressed for identification and as a mark of genuineness, and to give certain knowledge that note was an obligation of the corporation and no one else, and therefore, an action on such note was barred after three years. *L. M. Sigler v. Mt. Vernon Bottling Co., Inc.* (1958, 104 U.S. App. D.C. 260, 261 F. 2d 378).

Where parent British organization signed patent licensing agreement containing introductory clause stating that contract was made by such parent organization for itself and specified British subsidiaries as "Party of the One Part" and an American corporation and its American subsidiaries as "Parties of the Other Part", British subsidiary, on whose behalf parent British organization had authority to sign, was party to such agreement; and such agreement being under seal, an action by parent British organization and its subsidiary against parent American corporation, for use of patented inventions of the subsidiary British firm, was subject to 12 year statute governing actions on contracts under seal. *Smiths America Corp. et al. v. Bendix Aviation Corp.* (1956, 140 F. Supp. 46)

Where sealed agreement which gave plaintiffs option to purchase realty was mere evidence of debt owed by defendants to plaintiffs, and did not recite or mention indebtedness, suit to recover amount of indebtedness was not brought on option agreement, and twelve year statute of limitations applicable to suits on sealed instruments was inapplicable and did not extend time within which suit might be brought beyond that for bringing of ordinary contract actions. *Filson v. Fountain* (1952, 90 U. S. App. D. C. 273, 197 F. 2d 383).

STATUTE OF LIMITATIONS—EXECUTOR'S BOND

Where there was no suggestion of misconduct of executrix in record, statute permitting suit on executor's bond within five years did not apply to claim rejected by executrix. *Robert H. McNeill and T. Bruce Fuller v.*

Maude Selby Jamison and Glens Falls Ins. Co. (D. C. Mun. App. 1955, 116 A. 2d 160).

SUFFICIENCY OF ACKNOWLEDGMENT

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *William H. Grass v. T. E. Eiker, Trading as T. E. Eiker & Co.* (D. C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the securities and exchange commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such listed debts. *Id.*

SUFFICIENCY OF EXHIBITION

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *R. H. Lewis v. L. E. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

SUMMARY JUDGMENT

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *William H. Grass v. T. E. Eiker, Trading as T. E. Eiker & Co.* (D. C. Mun. App. 1956, 123 A. 2d 613).

SUSPENSIONS OF LIMITATIONS

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams v. Frank* (1954, 94 U. S. App. D. C. 174, 213 F. 2d 198).

To toll statute of limitations, no more is ever required than filing of declaration or complaint and issuance of summons within statutory period, followed by diligence in service of summons and prosecution of suit. *Slater v. Cannon* (D. C. Mun. App. 1952, 93 A. 2d 92).

Concealment, by mere silence, of breach of implied warranty to do work in workmanlike manner would not be sufficient to toll statutes of limitations. *Poole v. Terminix Co. of Maryland & Washington* (D. C. Mun. App. 1951, 84 A. 2d 699).

TERMINATION OF TRUST

Even if defendant, to whom two promissory notes had been delivered for collection, had been trustee of funds collected, where plaintiff's demand for the proceeds collected had been denied in May, 1947, the trust was thereby terminated and plaintiff's suit in February, 1952, was subject to and barred by three-year statute of limitations. *Calvin v. Rafferty* (1954, 94 U. S. App. D. C. 60, 214 F. 2d 230).

TOLLING OF STATUTE

Where fraud allegedly occurred in 1944 and was discovered in 1948, that plaintiff, who filed suit in 1949, was allegedly in prison, although he was present at court, at time this action came to trial in 1953 and plaintiff obtained dismissal did not invoke statute tolling limitations where plaintiff is imprisoned at time of accruing of right of action, and subsequent action was barred. *Thomas M. Frey v. Benton Davis and Ruth Davis* (1955, 97 U. S. App. D. C. 200, 229 F. 2d 774).

UNEMPLOYMENT CONTRIBUTIONS

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the

relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company v. R. E. McLaughlin et al., etc.* (D.C. Mun. App. 1959, 151 A. 2d 535).

USE AND OCCUPANCY

The three-year limitation statute applied to divorced wife's claim against divorced husband for his use of her realty after date of divorce. *Curles v. Curles* (1957, 100 U. S. App. D. C. 43, 241 F. 2d 448).

WAIVER

Unless a waiver of the statute of limitations is specifically stated to be perpetual, it should be held to operate only for a reasonable time. *Godfrey L. Munter, Sole Liquidation Trustee, etc. v. William C. Lankford et ano.* (1956, 98 U. S. App. D. C. 116, 232 F. 2d 373).

Though two-year note, executed in 1935, to order of estate of certain person, contained recital of waiver of statute of limitations, action on note in 1953 was barred by statute of limitations, in view of rule that such waiver operates only to extend limitation for a reasonable time, which in such case would have been for not longer than one extra three-year limitation period. *Id.*

WHEN STATUTE BEGINS TO RUN

Alleged breach of implied warranty to do a workman-like job in constructing walls for drive-in theater occurred when walls were constructed, and three year statute of limitations began to run at such time and barred suit filed more than three years thereafter for breach of such warranty resulting in collapse of wall. *Foley Corp. v. Dove et al.* (D. C. Mun. App. 1954, 101 A. 2d 841).

Complaint filed September 28, 1948, for fraud arising out of bribery of federal judge in May 1932, discovered according to complaint in 1937, was subject to three year statute of limitations applicable in District of Columbia, and, in absence of allegations enlarging the three year period, the action could not be maintained. *Wiren v. Paramount Pictures* (1953, 92 U.S. App. D.C. 347, 206 F. 2d 465).

The three year limitation period provided by statute applicable in District of Columbia to actions for fraud begins only upon discovery of facts out of which the claim of fraud arises, or from time such facts should reasonably have been ascertained in the exercise of due diligence. *Id.*

Statute of limitations runs against motorist's claim for damages sustained in collision, from date of collision. *Bair v. Bryant* (D. C. Mun. App. 1953, 96 A. 2d 508).

Action against railroad to recover damages for wrongful discharge of dining car waiter, commenced more than three years after his discharge, was barred by District of Columbia statute of limitations, since any cause of action for such damages accrued when waiter was discharged and his subsequent appeal under grievance procedure of collective bargaining agreement did not toll the running of the statute. *Condol v. Baltimore & O. R. Co.* (1952, 199 F. 2d 400).

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement had damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole v. Terminix Co. of Maryland and Washington, Inc.* (1952, 91 U. S. App. D. C. 287, 200 F. 2d 746).

WORKMAN'S COMPENSATION AWARD

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from

time when right of action accrued, barred action brought sixteen years after workman's compensation award, to enforce compensation order against plaintiff's employer. *Cassell v. Taylor* (1957, 100 U. S. App. D. C. 153, 243 F. 2d 259).

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, is sufficiently broad to include actions to enforce federally created rights. *Id.*

§ 12-203 [24: 343]. Foreign judgments.

NOTES TO DECISIONS

LIMITATION OF ACTIONS

Where Michigan final judgment of divorce was rendered on February 14, 1950, and support payments by husband had not been made since October, 1953, wife's cause of action for debt then accrued, and such action, when commenced within six years, was not barred by Michigan statute of limitations, and further, when action was commenced in the District of Columbia within 10 years since judgment was rendered in Michigan, suit would not be barred under Michigan law and was not barred in District of Columbia. *Kay King, etc. v. R. L. Fay et al.* (1958, 169 F. Supp. 934).

§ 12-205 [24: 345]. Statute does not run when defendant absent or concealed.

NOTES TO DECISIONS

NON-RESIDENTS

Provision suspending running of statute of limitations while defendant who is resident of District of Columbia is out of the district, had no application to defendant who first moved to district in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and action was barred by three year statute of limitations. *Frank v. Adams* (D. C. Mun. App. 1953, 98 A. 2d 789).

Statute of District of Columbia suspending running of statute of limitations while defendant who is resident of District is out of it, has no application to non-resident defendants. *Filson v. Fountain* (1952, 90 U. S. App. D. C. 273, 197 F. 2d 383).

SUMMARY JUDGMENT

Where defendants in action in the District of Columbia urged that plaintiff's claims for sums expended by plaintiff in connection with realty and for services were barred by limitations, and plaintiff contended that absence of some of the defendants from District of Columbia tolled statute of limitations, and plaintiff thereby raised issue of defendants having been residents of District of Columbia when causes of action accrued with subsequent absence from District of Columbia, summary judgment for defendants was precluded, since there was a genuine issue of fact material to decision on question of limitations. *Calvin v. Calvin et al.* (1954, 94 U. S. App. D. C. 42, 214 F. 2d 226).

WHEN STATUTE APPLIES

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams v. Frank* (1954, 94 U. S. App. D. C. 174, 213 F. 2d 198).

§ 12-208 [24: 348]. Actions against District of Columbia for unliquidated damages—Notice within 6 months—Police report.

NOTES TO DECISIONS

ACTUAL OR CONSTRUCTIVE NOTICE

The District of Columbia is not an insurer of the safety of persons from defects in its streets or sidewalks, but

its liability sounds in negligence imputed from a failure to perform a duty, and in regard to performance of that duty the District must have timely notice either actual or constructive of the dangerous condition. *Lillie Mae Jones v. District of Columbia* (D. C. Mun. App. 1956, 123 A. 2d 364).

CORRECTION OF NOTICE

Where, in action against District of Columbia, for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia so that the manhole edge and cover protruded from the ground, inaccuracies were contained in written notice seasonably sent commissioner, and an attempt to cure such inaccuracies was made by seasonable correction conveyed to assistant in office of corporation counsel, to whom commissioners has referred original notice, and to District's inspector of claims, judgment, by which the Municipal Court of Appeals, because of such inaccuracies, reversed judgment rendered for plaintiff in the municipal court, would be reversed. *Stone v. District of Columbia* (1956, 99 U. S. App. D. C. 32, 237 F. 2d 28).

NOTICE TO CORPORATION COUNSEL

In making claims against District of Columbia for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia, notice of claim was not required to be sent directly to the commissioners, and sending of an otherwise adequate notice to the corporation counsel would not make the notice ineffective. *Stone v. District of Columbia* (1956, 99 U. S. App. D. C. 32, 237 F. 2d 28).

NOTICE TO "DISTRICT OF COLUMBIA GOVERNMENT" SUFFICIENT

Under statute requiring written notice within six months of accidental injury to Commissioners of District of Columbia, "District of Columbia Government" was a sufficient synonym for "Commissioners of District of Columbia" and notice to "District of Columbia Government" was sufficient and in strict, even though not precisely literal, compliance with statute. *District of Columbia v. Walter C. Green* (1955, 96 U. S. App. D. C. 20, 223 F. 2d 312).

NOTICE TO "ENGINEER DEPT. D. OF C." SUFFICIENT

Statute requiring that written notice of injury be given within six months to commissioners of District of Columbia was sufficiently complied with where person allegedly injured by defect in sidewalk sent letter containing information to "Engineer Dept. D. of C." and thereafter furnished additional information upon request of inspector of claims, Office of Corporation Counsel, within statutory period, since information was received by proper office within proper time even though original notice was improperly directed. *Ernestine Hirshfeld, Executrix, etc., v. District of Columbia* (1958, 103 U.S. App. D. C. 71, 254 F. 2d 774).

OBLIGATION OF DISTRICT

The District of Columbia has the primary obligation to keep its streets safe for walking and for negligently failing to do so, liability attaches. *Lillie Mae Jones v. District of Columbia* (D. C. Mun. App. 1956, 123 A. 2d 364).

STRICT COMPLIANCE REQUIRED

Under statute requiring that written notice be given to Commissioners of District of Columbia in order to maintain action against District, notice sent to corporation's counsel giving notice of injury was fatally defective. *District of Columbia v. Venstone Stone* (D.C. Mun. App. 1955, 112 A. 2d 497).

A notice stating that claimant fell on manhole cover on southeast corner of an intersection whereas in fact accident occurred on northeast corner did not substantially comply with statute requiring notice of place of injury, and action for injuries could not be maintained. *Id.*

SUFFICIENCY OF EVIDENCE

In action against the District of Columbia for personal injuries resulting from fall on the sidewalk, the evidence was insufficient to take the case to the jury on the issue of whether the defect in the sidewalk had existed a sufficient time to charge the District of Columbia with notice thereof. *Lillie Mae Jones v. District of Columbia* (D. C. Mun. App. 1956, 123 A. 2d 364).

SUFFICIENCY OF NOTICE

While statute requiring that written notice of time, place, cause and circumstances of injury be given to District of Columbia commissioners before action can be maintained against District is mandatory, precise exactness in notice is not essential and reasonable compliance with statute so that District is not misled to its prejudice by any defects of description of place accident happened is sufficient. *Hurd v. District of Columbia* (D. C. Mun. App. 1954, 106 A. 2d 702).

WAIVER OF IMMUNITY

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Edwin M. Adams v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 765).

WRITTEN NOTICE

Under District of Columbia statute providing that no action shall be maintained against District unless claimant, within six months after injury, gives commissioners written notice of approximate time, place, cause and circumstances of injury, claimant who, within six months, gave commissioners written notice, but orally advised assistant corporation counsel that location there stated was incorrect and orally gave correct location, did not comply, and could not maintain action. *Charles B. McDonald v. The Government of the District of Columbia* (1955, 95 U. S. App. D. C. 305, 221 F. 2d 860).

Chapter 3.—STATUTE OF FRAUDS

§ 12-301 [11:1]. Estates created by parol—Estate by sufferance.

NOTES TO DECISIONS

EXTENSION AGREEMENT

A written six months' extension agreement which was entered into by lessor and lessees before expiration of five-year lease, and which did not create or purport to create a new estate, and which made no change in original lease except to fix new expiration date, was valid although not under seal, and lessees would not be entitled to thirty-day notice to quit as tenants at sufferance. *Binder v. Jaffe* (D. C. Mun. App. 1953, 101 A. 2d 260).

LEASE BY AGENT-LESSOR

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Maggie E. Paul v. Charles S. Holloway* (D. C. Mun. App. 1956, 122 A. 2d 774).

TERMINATION OF ORAL TENANCY

Where, at most, claim of tenant was that landlord orally promised that tenant could remain in possession of lot used as a parking lot at such rental as landlord might from time to time fix and to which tenant might agree, landlord's notice to tenant to quit terminated the tenancy, though landlord had allegedly agreed that lease was to run until landlord desired to erect a building on the lot. *Harry Snitman v. Reuben Goodman et al.* (D. C. Mun. App. 1955, 118 A. 2d 394).

§ 12-302 [11:2]. Actions to charge executors or others to answer for debt or default of another.

NOTES TO DECISIONS

AMBIGUITIES

Necessary elements of a writing required by statute of frauds may not be supplied by parol, but ambiguities in the terms may be resolved by other evidence. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393).

APPLICATION GENERALLY

One party's memorandum, evidencing oral agreement for sale of land, not signed by other parties or any one on their behalf was insufficient. *Bell v. Morgan* (1952, 199 F. 2d 168).

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, wherein broker claimed no interest in realty, statute of frauds was not applicable and afforded no defense. *Kyle v. Wiley* (D. C. Mun. App. 1951, 78 A. 2d 769).

ASSUMPTIONS ON APPEAL

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debt, in view of general findings in favor of stockholder, municipal court of appeals must assume that issues of consideration, and whether promise, if made, was an original and independent or merely a collateral promise to answer for the debt, default, or miscarriage of the corporation, had been resolved in favor of stockholder. *W. B. Smith v. Lo Castro* (D. C. Mun. App. 1957, 134 A. 2d 486).

CONTRACT SIGNED BY PURCHASER ONLY

Where purchaser brought action against vendor for breach of contract to convey land and only produced carbon copy of contract bearing only the signature of the purchaser, such document was no more than an offer to buy and was within statute of frauds and was unenforceable against vendor. *Harry M. Greenfield v. Alvin T. Murray, Executor of the Estate of Timothy Murray* (D. C. Mun. App. 1955, 117 A. 2d 227).

DOCTRINE OF FRAUD

Doctrine of fraud may be invoked to prevent statute of frauds from becoming an instrument of fraud. *Andrew J. Easter v. Kass-Berger, Inc.* (D. C. Mun. App. 1956, 121 A. 2d 868).

That employee, upon obtaining employment, came from Harrisburg to Washington, did not estop employer asserting that alleged oral contract for two years' employment was barred by statute of frauds. *Id.*

In absence of other and stronger circumstances, a mere refusal to perform an oral agreement is not such fraud as to prevent application of statute of frauds, despite hardship to a plaintiff. *Id.*

ELEMENTS OF WRITTEN MEMORANDUM

A written memorandum, to remove an oral agreement for two years' employment of statute of frauds, must state all promises of parties with sufficient clarity and definiteness to render essential terms of agreement clear without resort to parol testimony. *Andrew J. Easter v. Kass-Berger, Inc.* (D. C. Mun. App. 1956, 121 A. 2d 868).

Letter wherein defendant offered employment and stated that defendant was likely to be busy for at least the succeeding two years was not a sufficient memorandum of an alleged oral contract for two years' employment to remove contract from statute of frauds. *Id.*

EVIDENCE

In action against vendor by purchaser to have contract for sale of realty canceled and to recover payments made under the contract, on ground that purchaser was induced to sign a contract by fraudulent misrepresentations of vendor, evidence of settlement agreed to by the parties after suit had been begun, was properly admitted over objection that offers to compromise are not admis-

sible in support of a contested claim or defense, though agreement was oral and payments were not to be completed within one year, so that no suit could have been brought on the agreement itself. *Hiltpold v. Stern* (D. C. Mun. App. 1951, 82 A. 2d 123).

EXTENSION BY ORAL AGREEMENT

Under District of Columbia law, provision for time of performance in contract for sale of business and leasehold of premises upon which business was conducted, which contract was required to be in writing and signed by party to be charged, could validly be extended by oral agreement, where time was not of essence of contract. *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 93, 202 F. 2d 461).

Where lessor and lessees entered into written six months' extension agreement before expiration of five-year lease, lessees were not entitled to remain in possession past the extension period on basis of alleged parol option for additional six months' extension beyond first extension in view of fact that alleged option did not comply with Statute of Frauds and was not supported by any consideration. *Binder v. Jaffe* (D. C. Mun. App. 1953, 101 A. 2d 260).

IMPROVEMENTS

One who induces another by a parol agreement to change his position so materially that unless inducing agreement is enforced a fraud results is estopped to set up statute of frauds to bar such enforcement. *Bretwood v. Cook et al.* (1953, 92 U. S. App. D. C. 386, 207 F. 2d 439).

MEMORANDUM TO DISCLOSE VENDOR

Where there was a full and definite agreement as to all essentials which parties intended to be binding, and the parties signed a memorandum which was sufficient to satisfy the statute of frauds, execution of a formal contract as contemplated by the memorandum was not necessary to effect a valid contract between the parties. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393).

Written memorandum, signed by two parties, which stated that a \$500 deposit had been received from one of the parties, and that such deposit represented partial payment on agreed price of \$7,500 cash and assumption of existing note in purchase of business and machinery of named business, the location of which was stated, plus agreement of lease, and which stated that formal contract was to be drawn later, with full settlement within 30 days of such memorandum, was sufficiently definite and certain to satisfy statute of frauds, since it left no doubt as to who was purchaser, who was seller, what property was involved, and what the terms were. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393).

ORAL PROMISE

Where debt of open advertising account had been incurred by corporation, and after corporation had become insolvent, one of the officers made several payments on debt with his personal funds and stated that he wanted advertiser to get his money, it was doubtful that oral statement constituted a promise to pay corporate debt and even assuming it did, any claim based on it was barred by statute of frauds. *Alvin Epstein Advertising Corp. v. Helfer and Spector* (D. C. Mun. App. 1958, 138 A. 2d 925).

Even if oral statements constituted a promise to pay debt of corporation, issuance of three personal checks by alleged promisor in part payment of debt where checks were not in evidence could not constitute a writing sufficient to satisfy requirements of statute of frauds. *Id.*

Generally, a check may be deemed to be a writing sufficient to satisfy requirements of statute of frauds if it bears notations or contains references to papers which embody the essential terms of the contract. *Id.*

PAROL EVIDENCE

Where time is not of the essence of a written contract within the statute of frauds, strict compliance with covenant as to time of performance may be waived, prior to breach, by oral agreement of the parties without affecting other provisions of the written contract, and the mutual promises of the parties are sufficient consideration for such oral agreement. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393).

PARTIAL PERFORMANCE

That employee worked for six weeks under alleged oral contract for two years' employment was not sufficient part performance to take contract from statute of frauds. *Andrew J. Easter v. Kass-Berger, Inc.* (D. C. Mun. App. 1956, 121 A. 2d 868).

Generally, nothing short of full performance will take a contract not to be performed within one year from within statute of frauds. *Id.*

PERFORMANCE AND DEFEASANCE DISTINGUISHED

An oral contract wherein plaintiff was to assume duties of resident manager of an apartment development for which services he was to receive \$75 per week in addition to a rent-free apartment for the duration of the contract which was to continue until plaintiff completed his law studies as a student duly matriculated at a law school or unless plaintiff were obliged to discontinue his law studies because of deficient scholarship or for some similar reason, was void under the statute of frauds as an agreement not to be performed within the space of one year from the making thereof, in view of fact that at the time of contract plaintiff had approximately three years of law studies to complete, and in view of fact that provision for termination of the contract which might have occurred within one year was not performance necessary to take the agreement out of the operation of the statute. *C. A. S. Coan, Jr. v. V. J. Orsinger and Tyler Gardens Corp.* (1959, 105 U.S. App. D.C. 201, 265 F. 2d 575).

Fact that a contract may be terminated, or further performance rendered impossible, within the period of one year, does not take it out of the statute of frauds where the obligation is one which cannot be performed within the year, since discharge from liability under a contract is not performance thereof within the statute. *Id.*

QUESTION FOR COURT

Where evidence is clear and unconflicting, legal sufficiency of memorandum to remove case from statute of frauds is question for court. *Andrew J. Easter v. Kass-Berger, Inc.* (D. C. Mun. App. 1956, 121 A. 2d 868).

RENEWAL NOTICE UNDER LEASE

Where extended term of a lease is fixed by and is a part of the original written lease, and comes into existence merely by lessee's exercising his option and giving required notice, no question as to application of statute of frauds arises. *George Y. Worthington, III, T/A etc. v. Harry Serkes* (D. C. Mun. App. 1955, 111 A. 2d 877).

Renewal notice of tenant unsigned, but bearing stamped trade name, enclosed in the same envelope containing his rental check which bore tenant's signature and trade name was sufficient compliance with requirements of lease. *Id.*

SALE OF LEASEHOLD

Under District of Columbia law, agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 93, 202 F. 2d 461).

STOCKHOLDER'S ORAL PROMISE

In action by creditor of corporation against its sole stockholder on alleged oral promise to pay corporation's debts, evidence, verbal or documentary, failed to establish consideration which would support an original promise to pay debt, independent of simultaneous responsibility of corporation. *W. B. Smith v. Lo Castro* (D. C. Mun. App. 1957, 134 A. 2d 486).

SUFFICIENCY OF ACKNOWLEDGMENT

Where defendant, with whom plaintiff had made a gratuitous bailment of money, wrote plaintiff, in response to letters requesting payment of the money, that he was in no position "at present" to send plaintiff any money, the letter was sufficient acknowledgment of the debt to stop running of statute of limitations. *Noel C. Irvine v. Frank T. Gradoville* (1955, 95 U. S. App. D. C. 263, 221 F. 2d 544).

SUSCEPTIBLE OF PERFORMANCE WITHIN ONE YEAR

An alleged co-broker's agreement was not within the statute of frauds where it would have been fully performed as soon as the purchaser purchased the building site which could have occurred within one year, it being immaterial that the sale for which commissions were sought took place more than a year after the alleged co-broker's agreement. *Snyder etc. v. Hillegeist et al.* (1957, 100 U. S. App. D. C. 368, 246 F. 2d 649).

An agreement which is capable, possible or susceptible of performance within one year is not within the statute of frauds. *Id.*

TIME OF PERFORMANCE

Although time of performance was specifically provided in written memorandum, in view of mutual agreement between parties on or before date of performance to waive strict compliance and to extend time for the performance, time was not of the essence of the contract, and therefore the contract as orally extended was not void under statute of frauds. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393).

UNJUST ENRICHMENT

Where plaintiff's alleged oral option to purchase land was invalid under statute of frauds, and plaintiff's alleged action in interesting third party to purchase land was not for benefit of landowners but solely to enable plaintiff to make profit, unintended benefit conferred on landowners when they sold to such third party at higher price was not necessarily unjust and plaintiff could not recover value of the benefit under theory of unjust enrichment. *Rosenkoff v. Finkelstein* (1952, 90 U. S. App. D. C. 263, 195 F. 2d 203).

WAIVER

In discharged employee's action to recover salary after discharge, wherein employer at outset denied alleged contract of employment and made it clear that employer was relying on statute of frauds, employee's testimony as to conversation concerning employment was admissible on issue as to whether there had been an oral agreement for employment, and employer's failure to object to such testimony did not constitute a waiver of the defense based on statute of frauds. *Andrew J. Easter v. Kass-Berger, Inc.* (D.C. Mun. App. 1956, 121 A. 2d 868).

§ 12-303 [11: 3]. Declarations, grants, and assignments of trust—Implied trusts.

NOTES TO DECISIONS

IMPLIED TRUSTS

The statute relating to declarations and grants of trust and to implied trusts did not preclude court from recognizing as a trust fund money on deposit with building association in name of testatrix as trustee for her grandson who was a polio victim. *In re Scott's Estate* (1951, 96 F. Supp. 290).

ORAL AGREEMENTS

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm v. Wall* (D. C. Mun. App. 1954, 104 A. 2d 835).

TAXATION

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under District of Columbia Code section taxing

all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder v. District of Columbia* (1951, 88 U. S. App. D. C. 170, 187 F. 2d 217).

THIRD PARTIES

Verbal trusts are without force or effect under statute of frauds to defeat rights of third parties. *Thurm v. Wall* (D. C. Mun. App. 1954, 104 A. 2d 835).

§ 12-304 [11:4]. Contracts for sale of goods.

NOTES TO DECISIONS

NECESSITY OF OBJECTION

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for new trial. *Ford v. Spivey et al.* (D. C. Mun. App. 1951, 79 A. 2d 565).

§ 12-305 [11:5]. New promise to be in writing—Effect of payment on account—Recovery against joint contractors, coexecutors, coadministrators when statute waived.

NOTES TO DECISIONS

ESTOPPEL

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass v. Eiker, trading as T. E. Eiker & Co.* (D. C. Mun. App. 1957, 135 A. 2d 153).

NEW CONTRACT

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then elapsed since the signing of the first note. *Garfinkle v. Needle* (1952, 91 U. S. App. D. C. 342, 201 F. 2d 202).

SUFFICIENCY OF ACKNOWLEDGMENT

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *William H. Grass v. T. E. Eiker, Trading as T. E. Eiker & Co.* (D. C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the Securities and Exchange Commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such debts. *Id.*

SUMMARY JUDGMENT

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *William H. Grass v. T. E. Eiker, Trading as T. E. Eiker & Co.* (D. C. Mun. App. 1956, 123 A. 2d 613).

Chapter 4.—FRAUDULENT CONVEYANCES

§ 12-401 [11:11]. Intent to defraud creditors.

NOTES TO DECISIONS

CIRCUMSTANTIAL EVIDENCE

Fraud must be shown by clear and convincing evidence and by evidence which is not equivocal that is, equally

consistent with either honesty or deceit, but circumstantial evidence is sufficient to prove fraud. *Wynne et al. v. Boone et al., Boone v. Boone et al.* (1951, 88 U. S. App. D. C. 363, 191 F. 2d 220).

CONSTRUCTION

Statute providing that conveyances made with intent of defrauding certain persons shall be void is entitled to liberal construction. *N. M. Leonardo v. P. S. Leonardo et ano.* (1958, 102 U. S. App. D. C. 119, 251 F. 2d 22).

CONVEYANCES OF REALTY

Evidence sustained trial court's judgment setting aside, as in fraud of creditors, conveyances of realty. *Wynne et al. v. Boone et al., Boone v. Boone et al.* (1951, 88 U. S. App. D. C. 363, 191 F. 2d 220).

FUNCTION OF COURT

On appeal from judgment setting aside conveyance as fraud on creditors, sole function of Court of Appeals is to decide whether or not trial judge was clearly in error in being convinced by evidence presented, and it is not function of Court of Appeals to weigh evidence and it is not necessary that Court of Appeals itself find evidence on issue of fraud to be clear and convincing. *Wynne et al. v. Boone et al., Boone v. Boone et al.* (1951, 88 U. S. App. D. C. 363, 191 F. 2d 220).

INTENT OF PARTIES

In suit to set aside, as fraud on creditors, conveyances of realty, where grantee was found to be in same position as grantor, so far as knowledge and intent were concerned, and conveyance was found to have been fraudulent, neither grantor nor grantee could claim to have been injured by creditor's pursuit of one remedy rather than another. *Wynne et al. v. Boone et al., Boone v. Boone et al.* (1951, 88 U. S. App. D. C. 363, 191 F. 2d 220).

OTHER PERSONS

Under statute providing that every conveyance of realty made with intent to defraud creditors or "other persons" having just claims shall be void as against persons so defrauded, a wife, in regard to her property rights arising from marriage, is one of the "other persons" protected. *N. M. Leonardo v. P. S. Leonardo et ano.* (1958, 102 U. S. App. D. C. 119, 251 F. 2d 22).

QUESTION OF FACT

In District of Columbia, fraud is matter of fact, and therefore, where creditors established that conveyance had been made and recorded with intent to defraud, it would not be necessary to success of their suit to set aside conveyance that they proved that grantor was insolvent. *Wynne et al. v. Boone et al., Boone v. Boone et al.* (1951, 88 U.S. App. D.C. 363, 191 F. 2d 220)

VALUABLE CONSIDERATION

In action for judgment declaring plaintiff to be common-law wife of a defendant, and as such entitled to an inchoate right of dower in certain realty allegedly conveyed by him to his daughter before establishment of marriage, evidence, including undisputed testimony that defendant paid \$4,000 for property in question and conveyed it to daughter, for \$10 which was the entire consideration, established that codefendant was not a purchaser for valuable consideration within meaning of fraudulent conveyances statute. *N. M. Leonardo v. P. S. Leonardo et ano.* (1958, 102 U. S. App. D. C. 119, 251 F. 2d 22).

Words "valuable consideration" as used in portion of fraudulent conveyance statute providing that such statute shall not be construed to impair title of a purchaser for a "valuable consideration" means fair equivalent of the property conveyed. *Id.*

The sum of \$10, constituting the entire consideration allegedly paid for realty worth \$4,000, did not constitute "valuable consideration" within meaning of that term as used in statute providing that certain conveyances of realty made with intent of defrauding creditors shall be void except as against a purchaser for a valuable consideration, without notice. *Id.*

TITLE 13.—PROCESS, PLEADINGS, AND PARTIES

Chapter 1.—PROCESS

§ 13-103 [24: 373]. Service on foreign corporations.

NOTES TO DECISIONS

DOING BUSINESS

Where foreign corporation was not licensed to do business in the District of Columbia, and maintained no office or telephone directory listing there, and did not operate manufacturing plants, warehouses, sales or administrative offices there, and its assistant secretary maintained office there solely for liaison with departments and agencies of federal government and was without authority to make commitments for or to accept orders for said corporation, corporation was not "doing business" in District of Columbia within statute governing service of process. *Weisblatt, Trading as King's Credit, etc. v. United Aircraft Corp., etc.* (D. C. Mun. App. 1957, 134 A. 2d 713).

In proceeding in the District of Columbia by judgment creditor to attach credits of judgment debtor in the hands of the latter's employer, where employer moved to quash attachment on ground that employer was foreign corporation not doing business in District within statute governing service of process, the court properly accepted and considered affidavit of one of employer's officers, in view of the rule. *Id.*

Where New Jersey corporation had authorized representative in jurisdiction, who not only had power to solicit, but to negotiate and contract with businessmen there, and corporation had supplied him with its printed form of contract and authorized him to sign as distributor, as well as to accept payment for its machines and to issue its form of official receipt, and in addition had machine location supervisor in jurisdiction, such corporation was doing business in the jurisdiction within meaning of statute authorizing service of process on any officer or agent or employee of such foreign corporation. *Milton J. Weinstein and Myron Weinstein v. Ajax Distributing Co.* (D. C. Mun. App. 1955, 116 A. 2d 580).

Under District of Columbia statute providing that service may be made upon person conducting the business of a foreign corporation doing business in the District, service upon salesman who, although acting for other companies as well, sold foreign corporation's products to local grocers, he being the only person in District authorized to act for foreign corporation, was sufficient. *District Grocery Stores, Inc. v. Brunswick Quick Freeze Co.* (D. C. Mun. App. 1954, 106 A. 2d 134).

Where attorneys for plaintiff and defendant corporations, with authority and approval of their clients, compromised their differences and thereafter defendants paid plaintiff as required by agreement, which was done through attorneys, attorneys for defendant corporations, which were both incorporated outside district, were not, in subsequent suit involving agreement, agents within statute allowing service on a foreign corporation transacting business in the district by service on agent. *Wica, Inc. v. WWSW, Inc. et al.* (1951, 89 U. S. App. D. C. 308, 191 F. 2d 502).

Foreign finance corporation purchasing commercial paper discounted by seller in jurisdiction of seller is not doing business in jurisdiction of seller and is not amenable to process therein. *Bahlke v. Byram* (D. C. Mun. App. 1951, 78 A. 2d 384).

SERVICE OF PROCESS

In action for injuries sustained on defendant foreign corporation's State Fair premises, district court correctly granted defendant's motion to quash service of process in District of Columbia on corporation's director residing

therein, in absence of sufficient showing that corporation was doing business in District or that such director was corporation's agent. *Joseph S. Grimes v. Maryland State Fair, Inc.* (1956, 97 U. S. App. D. C. 275, 230 F. 2d 825).

A foreign corporation is amenable to process to enforce a personal liability, in absence of consent, only if it is doing business within jurisdiction in such manner as to warrant inference that it was present there, and even if it is doing business within jurisdiction, process will be valid only if served on some authorized agent. *Bahlke v. Byram* (D. C. Mun. App. 1951, 78 A. 2d 384).

Where defendant seller was neither an agent, officer or employee of finance corporations and only relation between finance corporations and seller was by virtue of a contract whereby finance corporations agreed to buy certain conditional sales contracts and commercial papers from seller and finance corporations were not doing business in District of Columbia, buyer's service of process made on seller as agent of defendant finance corporations, in action based on alleged fraud in sale of two automatic popcorn machines and usury in charges on purchase money installment note given seller and discounted with defendants, in part payment of machines, was properly quashed. *Id.*

§ 13-104 [24: 374]. Corporations—Process by publication.

NOTES TO DECISIONS

PROCESS ON DOMESTIC CORPORATION

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States v. Honorable Burnita S. Mathews, etc.* (1955, 95 U. S. App. D. C. 282, 221 F. 2d 837)

§ 13-105 [24: 375]. Process against infants—Guardian ad litem—Attorney—Compensation.

NOTES TO DECISIONS

APPOINTMENT OF GUARDIAN MANDATORY

Trial courts have a mandatory duty to appoint a guardian ad litem for every infant who is sued. *Besarick v. Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

ASSESSMENT OF ATTORNEY'S FEES

Where landlord brought an action against an infant tenant for rent, and tenant engaged services of counsel selected by tenant herself, but not assigned by the court, counsel was not impliedly appointed by the court by being awarded a fee within meaning of statute providing for appointment of an attorney for an infant defendant and assessment of his fees against a plaintiff, and therefore, in the absence of such appointment, trial court was without power to assess landlord for an attorney's fee. *Besarick v. Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

CORRECTION OF ERROR ON APPEAL

Although a landlord did not assign as error lack of authority in lower court to allow an infant tenant an attorney's fees after landlord dismissed her action for rent, Municipal Court of Civil Appeals would nevertheless, in the interests of fundamental justice, consider and correct error of trial court in awarding tenant an attorney's fee without strictly complying with governing statutory provisions for appointment of an attorney

for an infant defendant. *Besarick v. Lewis* (D. C. Mun. App. 1956, 125 A. 2d 320).

PAYMENT OF GUARDIAN'S FEE

In action against minor defendant, there was no abuse of discretion by trial court in ordering fee awarded to guardian ad litem for minor defendant to be paid from the estate of the minor in favor of whom judgment had been rendered in the litigation giving rise to the appointment of the guardian ad litem. *Reed v. Bulman* (1957, 100 U. S. App. D. C. 324, 244 F. 2d 772).

REPRESENTATION MANDATORY

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

§ 13-108 [24: 378]. Publication as to nonresident, those absent for six months, unknown heirs or devisees, for divorce or proceeding in rem—Actual service beyond District.

NOTES TO DECISIONS

ATTORNEY AND CLIENT

In proceeding in his own name by attorney retained on contingent fee basis to realize on judgment which he had obtained establishing client's right to recover upon client's subsequent failure or refusal to enforce collection of the judgment, client should be made party defendant, and court might, if it considered it advisable, require that, in lieu of newspaper publication, personal service provided for by statute be had on client. *Falcone and Millstein v. Hall et al.* (1956, 98 U. S. App. D. C. 363, 235 F. 2d 860).

DILIGENT EFFORT

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *L. Gardner v. F. Gardner* (D. C. Mun. App. 1958, 140 A. 2d 179).

PROCESS ON DOMESTIC CORPORATION

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States v. Honorable Burnita S. Mathews, etc.* (1955, 95 U. S. App. D. C. 282, 221 F. 2d 837).

PUBLICATION OF PROCESS, DEFINED

Statutory expression that service of process in a divorce action may be had "by publication" means by publication or its statutory equivalent, and therefore service of process on a nonresident defendant outside the district, in a divorce action, was valid. *Wiggins v. Wiggins* (D. C. Mun. App. 1957, 135 A. 2d 154).

REVERSION INTEREST IN TRUST FUNDS

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and he possessed a vested reversion and in May, 1960, he would receive a portion of the trust assets on partial termination of the trust, di-

vorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *K King, etc., v. R. L. Fay et al.* (1958, 169 F. Supp. 934).

UNITED STATES OF AMERICA

The federal District Court for District of Columbia lacked jurisdiction of action for declaratory judgment that Secretary of Interior and Indian woman were trustees for plaintiff of certain lands in Indian allotments wherein Indian defendant acquired interests through descent and will where United States did not consent to be sued, if lands were still governed by General Allotment Act, and Indian defendant was not personally served with process in District. *John J. Spriggs, Sr. v. Douglas McKay, Secretary of the Interior et al.* (1955, 97 U. S. App. D. C. 60, 228 F. 2d 31).

§ 13-109 [24: 379]. Service by publication—Return of summons—Proof of absence by affidavit.

NOTES TO DECISIONS

DILIGENT EFFORT

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *L. Gardner v. F. Gardner* (D. C. Mun. App. 1958, 140 A. 2d 179).

§ 13-111 [24: 381]. Publication of notice—Affidavit showing copy mailed—Guardian ad litem.

NOTES TO DECISIONS

DILIGENT EFFORT

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *L. Gardner v. F. Gardner* (D. C. Mun. App. 1958, 140 A. 2d 179).

PROCESS ON DOMESTIC CORPORATION

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States v. Honorable Burnita S. Mathews, etc.* (1955, 95 U. S. App. D. C. 282, 221 F. 2d 837).

§ 13-113 [24: 383]. Notice by publication upon proper parties unknown to be alive or dead—Heirs—Devisees—Diligence to ascertain.

NOTES TO DECISIONS

INTERVENTION BY ADDITIONAL CLAIMANTS

In proceeding involving competing claims to interstate's estate, wherein service by publication was authorized on unknown heirs and next of kin of intestate and all others concerned, allowing additional claimants to intervene after date set therefor in service by publication but prior to entry of a final decree did not constitute an abuse of trial court's discretion. *Collins et al. v. O'Brien et al.* (1953, 93 U. S. App. D. C. 152, 208 F. 2d 44).

Chapter 2.—PLEADINGS

§ 13-214 [24: 13]. Equitable defenses in actions at law.

NOTES TO DECISIONS

TENANT'S DEFENSES

When tenant is sued for possession of realty for non-payment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Seidenberg v. Burka* (D. C. Mun. App. 1954, 106 A. 2d 499).

§ 13-217 [24: 16]. Interpleader—Affidavit by defendant—Contents—Order of court—Appearance of third party—Failure to appear.

NOTES TO DECISIONS

NECESSARY PARTIES

In action by purchaser against agent for return of deposit, where vendors, through their attorney, demanded the deposit from agent but purchaser did not serve vendors, presumably because they were beyond jurisdiction, and did not attempt service other than personal, and agent had personal interest in one-half of deposit but did not interplead vendors, and effect on vendors' interest of litigation between purchaser and agent was uncertain, vendors would be deemed conditionally necessary but not indispensable parties, and proceeding could properly continue without them if circumstances did not permit service. *Gauss v. Kirk* (1952, 91 U. S. App. D. C. 80, 198 F. 2d 83).

Chapter 3.—AMENDMENT OF AND MISTAKES IN PLEADINGS AND PROCEEDINGS

§ 13-301 [24: 61]. Writs, pleadings, and other papers amendable at any stage, on terms—Supplemental or substituted affidavits permitted.

In all judicial proceedings the court, justice or judge, in which, or before whom, the cause shall be

pending shall have power upon such terms as shall seem best, at any stage of the case, to allow amendments of writs, pleadings, or other papers in the cause and to allow supplemental or substituted affidavits to be filed. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 399; June 30, 1902, 32 Stat. 530, ch. 1329.)

COMPILER'S NOTE

The words "seem best, at any stage of the case, to allow amend-" were inadvertently omitted from the section in the 1951 edition.

NOTES TO DECISIONS

AMENDMENT TO CONFORM TO PROOF

Where bailor moved to amend her complaint against bailee for loss of and damage to property stored in bailee's warehouse under storage contract containing limitation of liability, to include allegation charging bailee with gross negligence, after testimony of bailee's witnesses revealed to bailor for first time manner in which bailee conducted its business, and court deferred action on motion until conclusion of case, when bailor renewed her motion and court denied it without prejudice to bailor raising issue by prayer for instruction, court in effect permitted complaint to be amended to conform to proof, and granting of amendment was proper. *Manhattan Storage & Transfer Co., Inc., v. Lura Davis et al.* (D. C. Mun. App. 1955, 117 A. 2d 120).

§ 13-303. Costs on amendment at discretion of court.

NOTES OF DECISIONS

SERVICE OF PROCESS

Service of process on location supervisor of New Jersey corporation, who was in jurisdiction as agent or representative of defendant corporation and was conducting its business in discharge of its contractual obligations, gave reasonable assurance of notice to the corporation of impending suit and was proper. *Milton J. Weinstein and Myron Weinstein v. Ajax Distributing Co.* (D. C. Mun. App. 1955, 116 A. 2d 580).

TITLE 14.—PROOF

Chapter 1.—EVIDENCE IN GENERAL

§ 14-101 [9:1]. All evidence to be under oath or affirmation—Affirmation to be the equivalent of an oath.

NOTES TO DECISIONS

PROCEEDINGS UNDER OATH

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

§ 14-102 [9:2]. Perjury—Defined.

NOTES TO DECISIONS

BILL OF PARTICULARS

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness testified falsely when he testified that he did not at request of Administrative Assistant to the President of the United States take care of correspondence of Administrative Assistant while he was away was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied in proving that witness perjured himself in testifying that he had not taken care of Administrative Assistant's mail while he was away. *United States v. Lattimore* (1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment that witness testified falsely when he stated that prior to certain date he did not know that certain person was a Communist was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied to show that witness had been told that such person was a Communist, and defining the word "Communist", and informing witness as to identity of persons who told witness that such person was a Communist, and time, place, and circumstances under which witness was told this. *Id.*

CONSTITUTIONALITY

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *United States v. Lattimore* (1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he said that he did not know that certain person was a Communist, was invalid because violative of First Amendment to the federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press and the Sixth Amendment protecting an accused in the right to be informed of the nature and cause of the accusation against him. *Id.*

MATERIALITY

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States v. Lattimore* (1953, 112 F. Supp. 507).

§ 14-104 [9:21]. Impeachment of own witness—Surprise.

NOTES TO DECISIONS

CONDUCT OF PROSECUTOR

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self-defense or the degree of homicide. *R. Belton v. United States* (1958, 104 U.S. App. D.C. 81, 259 F. 2d 811).

CROSS-EXAMINATION

Where trial judge had sustained the prosecutor's contention that witness was hostile, prosecutor's asking of a series of questions phrased "You don't remember [such-and-such]?" did not constitute attempt to cross-examine prosecution witness. *Joseph Doto v. United States of America* (1955, 96 U. S. App. D. C. 17, 223 F. 2d 309).

DISCRETION OF COURT

Statute providing that, whenever court shall be satisfied that party producing witness has been taken by "surprise" by testimony of witness, such party may, in discretion of court, be allowed to prove, for purpose only of affecting credibility of witness, that witness has made to such party or his attorney statements substantially variant from his sworn testimony about material facts in the cause, allows ample latitude for application of a broad concept of "surprise" by requiring only that court shall be satisfied that "surprise" exists. *Wheeler v. United States* (1953, 93 U. S. App. D. C. 159, 211 F. 2d 19).

In prosecution for carnally knowing and abusing a ten year old girl, trial court did not abuse its discretion in permitting the prosecution, when it impeached the girl, who was the prosecution's witness, because the prosecution was surprised by testimony of girl contrary to statement made by girl to the police and to the grand jury, to use the entire statement of the girl to the police. *Id.*

FOUNDATION FOR IMPEACHMENT

The refusal to admit transcript of testimony of witness at first trial was not error where no foundation was laid to permit introduction of transcript for purpose of affecting credibility of witness. *Glover v. District of Columbia* (D. C. Mun. App. 1951, 77 A. 2d 788).

GOVERNMENT WITNESS

Witness having been assured by court that he could not incriminate himself by testifying to purchase of narcotics made at instance of Government, United States Attorney had right to believe that witness would testify in accordance with receipt by which he acknowledged receiving money from officer for purchase of heroin, and had right, for impeachment purposes, to announce "surprise" when witness refused to do so. *Carrado v. United States, Manfredonia v. United States, Smith v. United States, Williams v. United States, Atkins v. United States, James v. United States, Turner v. United States* (1953, 93 U. S. App. D. C. 183, 210 F. 2d 712).

GROUND FOR IMPEACHMENT

Though the statute allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found. *R. Belton*

v. *United States* (1958, 104 U.S. App. D.C. 81, 259 F. 2d 811).

PRIOR STATEMENT

A finding of surprise is, by statute in the District of Columbia, a prerequisite to the impeachment by a party of his own witness by former testimony, but even when a prior statement is used to impeach, it is admissible solely to affect credibility and is not to be considered as support for the truth of its contents. *Young v. United States* (1954, 94 U. S. App. D. C. 62, 214 F. 2d 232).

QUESTIONS ON APPEAL

Trial court's ruling on "surprise," for impeachment purposes, may not be disturbed unless it plainly appears that ruling is without any rational basis. *Carrado v. United States*, *Manfredonia v. United States*, *Smith v. United States*, *Williams v. United States*, *Atkins v. United States*, *James v. United States*, *Turner v. United States* (1953, 93 U. S. App. D. C. 183, 210 F. 2d 712).

TRANSCRIPT OF PREVIOUS TESTIMONY

Transcript of testimony in earlier trial is not automatically admissible in a later trial but may be admissible for the purpose of affecting the credibility of a witness. *Glover v. District of Columbia* (D. C. Mun. App. 1951, 77 A. 2d 788).

Chapter 3.—COMPETENCY OF WITNESS

§ 14-302 [9:9]. Testimony of surviving party.

NOTES TO DECISIONS

CORPORATION

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, instrument signed by third brother and dated 1930 certifying that as of that date third brother held in his own name certain corporate stock for plaintiff did not corroborate alleged admission by third brother that in 1946, he still held such stock for plaintiff, particularly in view of fact that third brother with plaintiff's acquiescence, exercised his own judgment freely in reinvesting plaintiff's share of the estate. *Bevard v. Bevard* (1952, 103 F. Supp. 533).

CORROBORATION

Under statutory provision that in any civil action against executor of deceased person, no judgment or decree shall be rendered in favor of plaintiff founded on uncorroborated testimony of plaintiff as to any transaction with or action, declaration, or admission of deceased, corroborative evidence need not be sufficient of itself to support judgment, but judgment could be based essentially on survivor's testimony if there was other evidence from which reasonable men might conclude that survivor's testimony was probably true. *L. Davis v. J. J. Carmody, Executor, etc.* (D.C. Mun. App. 1959, 154 A. 2d 132).

In action by nurse against executor to recover for alleged overtime services to decedent on theory that decedent has promised to reimburse nurse therefor, testimony of two witnesses called in attempt to corroborate nurse's testimony was not sufficient, and nurse therefore could not recover. *Id.*

EVIDENCE

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie v. Imirie and Bogley etc.* (1957, 100 U. S. App. D. C. 371, 246 F. 2d 652).

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had

served as executor of testatrix' estate, in absence of corroborating evidence plaintiff's testimony that at a meeting with third brother in 1946, such brother had promised to send certain corporate stocks to plaintiff would be excluded. *Bevard v. Bevard* (1952, 103 F. Supp. 533).

In action for accounting by testatrix, brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, to permit judgment to be based on plaintiff's testimony that he had met third brother in 1946 and had asked that certain stock be sent to him and that third brother had agreed to do so, credible evidence corroborating such testimony was necessary. *Id.*

Judgment rendered for plaintiff in action to set aside a deed to realty executed by plaintiff's deceased father in favor of plaintiff's defendant sister, was not rendered invalid by statute prohibiting rendition of judgment in civil action against representative of a deceased on uncorroborated testimony of plaintiff or of agent or employee of plaintiff as to transaction with or action, declaration, or admission of deceased, on the ground that evidence was admitted in violation of statute, where judgment was supported by other evidence. *Santucci v. Pignatello* (1951, 88 U. S. App. D. C. 190, 188 F. 2d 643).

FRAUDULENT CONCEALMENT OF FINANCIAL MEANS

Defendant's testimony, in support of his counterclaim for legal services, that decedent who died in 1954 leaving estate of \$40,000, had in 1948 claimed to be unable to pay for services rendered to him at such time, did not compel finding, as matter of law, that decedent had fraudulently concealed cause of action against himself for services and had thus extended time for commencement of action. *Lora Marie Da Costa, Administratrix v. Russell Hardy* (D. C. Mun. App. 1955, 118 A. 2d 805).

SUITS BY ADMINISTRATOR

Statute prohibiting judgment on uncorroborated testimony in actions against administrators has no applications to suits commenced by an administrator. *Pryor v. Bond* (D. C. Mun. App. 1954, 110 A. 2d 539.)

§ 14-305 [9:12]. Conviction of crime not to disqualify witness—Conviction may be shown—How proved.

NOTES TO DECISIONS

ACCUSATION, ARREST OR INDICTMENT

It is improper for impeachment purposes to show accusation, arrest or indictment for a crime, in any case, civil or criminal. *P. A. Wanamaker v. F. Lewis Jr., WWDC Inc., etc., et ano.* (1959, 173 F. Supp. 126).

BUSINESS OF REPAIRING FIREARMS

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

IMPEACHMENT

It is improper to question a witness as to when she was first arrested for the purpose of impeaching the witness' credibility which can be impeached only by evidence of conviction of crime. *United States v. Offutt* (1956, 145 F. Supp. 111).

Cited in connection with statute providing that Tax Court is bound by rules of evidence applicable in District Courts and District Code provision authorizing admission of evidence of prior conviction testimony entered upon pleas of nolo contendere. *Lillian Kilpatrick v. Commissioner of Internal Revenue* (1955, — U. S. App. Fifth Circuit —, 227 F. 2d 240).

Fact that defendant charged with grand larceny had received a pardon for prior conviction based upon un-

authorized use of a motor vehicle, which pardon was received pursuant to Presidential proclamation promulgating a general amnesty for persons convicted of violations of federal statutes who had served honorably in World War II for not less than a year, did not preclude prosecutor from cross-examining defendant concerning prior conviction in effort to impeach defendant's credibility. *Richards v. United States* (1951, 89 U. S. App. D. C. 354, 192 F. 2d 602, certiorari denied 342 U. S. 946, 72 S. Ct. 676, rehearing denied 343 U. S. 921, 72 S. Ct. 1043).

Where party claiming right to possession of rings deposited with police department was at time of trial in prison, and his case was presented by interrogatories and cross-interrogatories, admission in evidence of claimant's criminal record as affecting his credibility as witness was not error despite fact that he had not been questioned concerning his record on cross-interrogatories, in view of fact that claimant had disclosed earlier in proceedings that he was in prison and could consequently anticipate that criminal record would be used against him. *Kronick v. Sullivan* (D. C. Mun. App. 1951, 83 A. 2d 518).

ORDINANCES OR MISDEMEANORS

The statute permitting an attack on credibility of one "convicted of a crime" does not include violations of municipal ordinances or misdemeanors involving no element of inherent wickedness. *E. A. Frost v. J. M. Hays* (D.C. Mun. App. 1958, 146 A. 2d 907).

PRIOR CONVICTIONS

In prosecution for possession of government check stolen from mails, for forged endorsement, and for uttering of check so forged, defendant's prior conviction for same offenses was not admissible where defendant's appeal was pending and consequences of error in admitting such evidence for purpose of showing a pattern of conduct or scheme on part of defendant were sufficiently grave, under the circumstances, to warrant new trial. *J. F. Fenwick v. United States* (1958, 102 U. S. App. D. C. 212, 252 F. 2d 124).

In prosecution of defendant for carrying unlicensed pistol, use of F. B. I. records of various arrests and convictions of defendant as rebuttal to his testimony on cross-examination respecting prior convictions, was erroneous. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

District of Columbia statute providing method for proof of prior convictions for purpose of affecting credibility prescribes the exclusive method, and proof by any other means is not admissible. *Id.*

SCOPE OF INQUIRY

It is improper for impeachment purposes to ask a witness if he has been convicted of a felony when he has not been so convicted. *P. A. Wanamaker v. F. Lewis Jr., WWDC, Inc., etc., et ano.* (1959, 173 F. Supp. 126).

Evidence of prior convictions must be restricted to question of defendant's credibility and may not be considered for purpose of determining his guilt or innocence of the offense charged. *Peyton v. D. C.* (D. C. Mun. App. 1953, 100 A. 2d 36).

TAX COURT PROCEEDINGS

In proceedings before the Tax Court, convictions for income tax evasion of taxpayers could be put into evidence as affecting their credibility, though based on pleas of nolo contendere. *Masters and Williams v. Commissioner of Internal Revenue* (1957, — U. S. App. D. C. —, 243 F. 2d 335).

Where one of the taxpayers did not personally take the stand in proceedings before Tax Court, but his sworn income tax returns were in evidence as were his other records, his conviction for income tax evasion was properly admitted in evidence as affecting his credibility. *Id.*

§ 14-308 [9: 20]. Testimony of physicians—Inapplicable in criminal cases.

In the courts of the District of Columbia no physician or surgeon shall be permitted, without the

consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, which he shall have acquired in attending a patient in a professional capacity and which was necessary to enable him to act in that capacity, whether such information shall have been obtained from the patient or from his family or from the person or persons in charge of him: *Provided*, That this section shall not apply to evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon a human being, and the disclosure shall be required in the interests of public justice: *Provided further*, That this section shall not apply to evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity, or in the pretrial or posttrial proceedings involving any criminal case where a question arises concerning the mental condition of an accused or convicted person. (As amended, Aug. 9, 1955, 69 Stat. 612, ch. 673, § 4.)

AMENDMENTS

1955—The act of August 9, 1955, cited to text, amended the section by adding the last proviso clause.

NOTES TO DECISIONS

CONFIDENTIAL COMMUNICATIONS

The statute respecting confidential communications to a physician encompasses information contained in hospital records concerning diagnosis or treatment. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

In action on an industrial life policy with defense of violation of provisions of the policy respecting hospital treatment, admitting hospital records concerning the insured to indicate the basis of treatment was improper as involving a privileged matter, since basis for hospitalization entailed a diagnosis within the privilege statute. *Id.*

CONSTRUCTION

The federal civil procedure rule that party requesting and receiving copy of his adversary's physician's report of physical or mental examination of such party must furnish adversary, on request, like report of any previous or subsequent examination of same condition, is in derogation of statutory privilege and should be strictly construed. *Sher v. De Haven* (1952, 199 F. 2d 777).

DETERMINATION ON APPEAL

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

DISCLOSURE OF CONFIDENTIAL INFORMATION

At trial in November, 1955, for robbery committed May 9, 1955, court properly applied amendment effective August 9, 1955, which removed prohibition of disclosure of confidential information by physicians in criminal trials when accused raises the defense of insanity. *Parker v. United States* (1956, 98 U. S. App. D. C. 262, 235 F. 2d 21).

EVIDENCE

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially

in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

EVIDENCE OF TREATMENT—PRIVILEGED

Admission of testimony of mental hospital physician and psychiatrist who had treated defendant in mental hospital to which defendant had been committed until he was mentally competent to stand trial was in violation of statute creating privilege as to facts learned by physician in treating patient, and was error requiring reversal of conviction. *George Taylor v. United States of America* (1955, 95 U. S. App. D. C. 373, 222 F. 2d 398).

Physician who does not treat prisoner, but only examines him in order to testify about his condition, may testify as to such fact. *Id.*

Privilege created by statute as to information acquired by physician in attending patient affords protection to patients who have been committed to public mental hospitals. *Id.*

EXTENT OF PRIVILEGE

Statute governing disclosure by physician or surgeon of confidential information which he may have acquired in attending a patient in professional capacity is very broad and forbids disclosure by physician of any information obtained by him in professional capacity. *George Taylor v. United States of America* (1955, 95 U. S. App. D. C. 373, 222 F. 2d 398).

The statutory privilege against physicians' disclosure of confidential information, acquired in attending patient, without patient's consent, extends not only to information orally given physician by patient, but also to any information obtained by physician in his professional capacity through his observation or examination and diagnosis and treatment of patient as well as all inferences and conclusions therefrom. *Sher v. De Haven* (1952, 199 F. 2d 777).

HOSPITAL RECORDS

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, hospital records were properly admitted for limited purpose of establishing dates of insured's admissions into hospitals without violating statute making privileged communications to physician or information obtained by physician concerning patient. *M. E. Ferguson v. Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

PHYSICIANS' RECORDS

In action for personal injuries, District Court did not abuse its discretion in denying defendant's pretrial motion to require plaintiffs to produce and permit defendant to inspect and copy physicians' reports of their examinations and treatment of plaintiffs after accident, as such reports were privileged and hence not subject to discovery. *Sher v. De Haven* (1952, 199 F. 2d 777).

POST MORTEM REPORTS

Report of a post mortem examination is not privileged under statute making privileged communications to physician or information obtained by physician concerning patient, though examination is made in hospital where patient was treated, if examination does not relate to diagnosis or treatment of patient. *M. E. Ferguson v. Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, report of post mortem examination of insured and testimony of physician concerning objective laboratory findings derived from post mortem

examination, were admissible over objection that they were privileged, though post mortem examination was made at hospital where insured was treated, in absence of showing that information obtained in course of treatment of insured was significant in guiding the post mortem examination. *Id.*

PRIVILEGE

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, mother, as daughter's antagonist, could not waive daughter's statutory right of privilege concerning prognosis and recommendations of her personal physician. *In re Sippy* (D. C. Mun. App. 1953, 97 A. 2d 455).

PROFESSIONAL CAPACITY

If psychiatrist at mental hospital was examining physician, disclosures made to him by murderer might come within exception to privilege, in that physician who does not treat prisoner but only examines him in order to testify about his condition may testify as to such fact. *Kendall v. Gore Properties* (1956, 98 U. S. App. D. C. 378, 236 F. 2d 673).

The doctor-patient privilege extends only to information the physician acquires in attending a patient in a professional capacity, but such privilege does not include information obtained merely by an examination. *Browne v. Brooke* (1956, 98 U. S. App. D. C. 391, 236 F. 2d 686).

The doctor-patient privilege will not attach to an examination of a patient by a physician, if the person examined is capable of forming a judgment on the subject and understands that the physician is not attending or treating him, but if not capable of forming such a judgment the question of the physician's status must be determined objectively. *Id.*

Where physician testified that no normal patient-physician relationship existed between him and testatrix when he conducted an examination of her, and that she was under no misapprehension that there was such a relationship, his testimony as to the unsoundness of testatrix's mind when he conducted such examination was not privileged. *Id.*

PURPOSES FOR WHICH ADMISSIBLE

Even though testimony of physician as to information acquired by him in attending patient in professional capacity was inadmissible at that person's criminal trial, such testimony could be included for consideration by trial judge in deciding whether such person, who had previously been found incompetent to stand trial, was now competent. *George Taylor v. United States of America* (1955, 95 App. D. C. 373, 222 F. 2d 398).

WAIVER

In personal injury suit, defendant's mere willingness to furnish plaintiff a copy of defendant's medical examiner's report on his examination of plaintiff after accident, as stated in defendant's pretrial motion to require plaintiff to produce and permit defendant to inspect and copy plaintiff's physicians' reports of their examinations and treatment of plaintiff, did not entitle defendant to demand such reports under civil procedure rule, where plaintiff had not requested or received report of defendant's medical examiner nor taken his deposition and hence had not waived statutory privilege of plaintiff's physicians' reports. *Sher v. De Haven* (1952, 199 F. 2d 777).

WAIVER OF PRIVILEGE

In action on industrial life policy with defense of violation of policy provisions respecting hospital treatment of insured, where hospital records concerning insured were admitted in evidence, claimant did not waive privilege statute by signing a form for sole purpose of proving death of the insured, where form contained no waiver of physician-patient privilege in express terms. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

Chapter 4.—DOCUMENTARY EVIDENCE

§ 14-402 [9:16]. Record of deeds and wills.

NOTES TO DECISIONS

JURISDICTION

Where testamentary trust named cotrustees, and realty comprising part of trust res was located in District of Columbia, Ohio judgment appointing sole trustee in effect purported to change title to realty in District of Columbia by vesting it in one trustee, instead of two as provided by will, and in such respect, Ohio court was without jurisdiction over subject matter, and judgment was not entitled to full faith and credit. *Hughes et al. v. Hughes* (1953, 112 F. Supp. 899).

§ 14-403 [9:17]. Record of will to be prima facie evidence of contents and execution.

NOTES TO DECISIONS

PRIMA FACIE PROOF OF EXECUTION

Where will had been admitted to probate before caveat was filed, caveatee was entitled to rely on record of

probate as her prima facie proof of due execution. *Flocken v. Di Gennaro et al.* (1951, 88 U. S. App. D. C. 133, 187 F. 2d 513).

§ 14-404 [9:18]. Force in District of Columbia of wills probated elsewhere.

NOTES TO DECISIONS

JURISDICTION

Decree appointing sole trustee of testamentary trust which named cotrustees, one of whom refused to serve, was entitled to full faith and credit if court awarding decree had jurisdiction, but was open to challenge if jurisdiction was lacking. *Hughes et al. v. Hughes* (1953, 112 F. Supp. 899).

Ohio court had power to compel execution of deed by parties personally before it, and thereby could indirectly affect realty beyond its territorial jurisdiction, but could not affect realty which was located in District of Columbia and which had been devised to cotrustees where one of the trustees was not before the court. *Id.*

TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS

Chapter 1.—JUDGMENTS AND DECREES

§ 15-101 [24: 321]. Limitations.

NOTES TO DECISIONS

FORFEITED RECOGNIZANCE IS NOT A JUDGMENT

A forfeited recognizance is not a "judgment" within statute fixing period of limitation in which a judgment is enforceable by execution. *Thomas M. Walsh v. United States of America* (1955, 95 U. S. App. D. C. 123, 220 F. 2d 488).

PRIOR JUDGMENT

Where plaintiff brought suit against United States based upon a prior judgment, and no issues were raised not already litigated, and plaintiff sought nothing more than reaffirmation of first judgment, the first judgment was a bar to instant suit. *Citizens Bank and Trust Co. etc. v. United States* (1956, 100 U. S. App. D. C. 1, 240 F. 2d 863).

VALIDITY OF EXTENSION ORDER

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Charles E. Michael v. Fred Smith* (1955, 95 U. S. App. D. C. 186, 221 F. 2d 59).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15-102 [24: 322]. Expiration of judgment or decree.

NOTES TO DECISIONS

VALIDITY OF EXTENSION ORDER

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Charles E. Michael v. Fred Smith* (1955, 95 U. S. App. D. C. 186, 221 F. 2d 59).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15-103 [24: 323]. Lien of judgment or decree—Recognition.

NOTES TO DECISIONS

"CREDITORS" CONSTRUED

The statutory reference to "creditors" in the recording acts includes a good faith judgment creditor holding a statutory lien obtained under the statute without the necessity of such creditor executing his lien by attachment or by filing a bill in equity. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

FORFEITED RECOGNIZANCE IS NOT A JUDGMENT

A forfeited recognizance is not a "judgment" within statute fixing period of limitation in which a judgment is enforceable by execution. *Thomas M. Walsh v. United States of America* (1955, 95 U. S. App. D. C. 123, 220 F. 2d 488).

TRIAL WITHOUT JURY

Where vendor conveyed property and grantee without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing deeds of trust against the property and foreclosure proceedings were thereafter commenced, vendor's suit for equitable relief against foreclosure proceedings and judgment creditors of the grantee was properly heard by the trial court without a jury, since the suit was addressed to the equity jurisdiction of the court. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

§ 15-107 [24: 327]. Scire facias.

NOTES TO DECISIONS

VALIDITY OF EXTENSION ORDER

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Charles E. Michael v. Fred Smith* (1955, 95 U. S. App. D. C. 186, 221 F. 2d 59).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

Chapter 2.—EXECUTIONS

§ 15-204 [24: 274]. Scire facias.

NOTES TO DECISIONS

VALIDITY OF EXTENSION ORDER

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Charles E. Michael v. Fred Smith* (1955, 95 U. S. App. D. C. 186, 221 F. 2d 59).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15-205 [24: 275]. Fiat.

NOTES TO DECISIONS

VALIDITY OF EXTENSION ORDER

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Charles E. Michael v. Fred Smith* (1955, 95 U. S. App. D. C. 186, 221 F. 2d 59).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

Chapter 3.—PROCEEDINGS IN AID OF EXECUTION

Sec

- 15-314. Attachment of wages—Percentage limitations—Priority of attachments.
- 15-315. Employer's duty to withhold and make payments—Percentage to be withheld.
- 15-316. Judgment creditor to file receipts, in court, of amount collected.
- 15-317. Penalty for failure of employer-garnishee to pay—Lapse of attachment—"Wages" defined.
- 15-318. Percentage limitations in cases of judgments for support do not apply.
- 15-319. Municipal Court attachments—Lapse—Validity—Installment payments—When court may direct payment of—Quashing of attachments.
- 15-320. Rules of procedure.

§ 15-301 [24: 284]. Attachment after judgment, when issued—Costs.

NOTES TO DECISIONS

RIGHT TO ORAL EXAMINATION

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

§ 15-304 [24: 287]. Interrogatories—Answers under oath within ten days—Oral examination.

(a) In all cases of attachment the plaintiff may exhibit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee concerning any property of the defendant in his possession or charge or any indebtedness of his to the defendant at the time of the service of the attachment or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers verified by a written declaration that such answers are made under the penalties of perjury, to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(b) Only one attachment upon goods, chattels, and credits of a judgment debtor shall be satisfied at one time. Where more than one such attachment issued against the same judgment debtor has been served on any garnishee such attachments shall be satisfied in the order in which they were served upon the garnishee. This subsection shall not apply with respect to an attachment upon wages to which sections 15-314 to 15-319 apply.

(c) Every person who willfully makes and subscribes any return, statement, or other document, pursuant to this section, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter shall be subject to the penalties prescribed for perjury. (Mar. 3, 1901, 31 Stat. 1360, ch. 854, § 1089; Aug. 31, 1954, 68 Stat. 1043, ch. 1166, § 1; Aug. 4, 1959, 73 Stat. 277, Pub. L. 277, § 2.)

AMENDMENTS

1959—Section 2 of the act of August 4, 1959, cited to text, amended subsection (b) by adding the last sentence thereto.

1954—The act of August 31, 1954, amended the section by substituting "file his answers verified by a written declaration that such answers are made under penalties of perjury" for "file his answers, under oath." The act added sections (b) and (c).

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

NOTES TO DECISIONS

JUDGMENT AGAINST GARNISHEE

Where University which received part of its support from the United States, had the right to hire and fire any employee without consulting any branch of federal government, and salary of furniture repairmen was fixed by University, repairman was an employee of the University, and his salary was owed by the University, and thus was subject to garnishment, even though University intended to pay repairman from funds furnished by government and by a United States Treasury check. *Marvins Credit, Inc. v. Howard University* (D. C. Mun. App. 1953, 101 A. 2d 247).

JUDGMENT OF CONDEMNATION

Where traverse was not filed to garnishee's answer in Municipal Court, judgment of condemnation immediately

following oral examination of garnishee was not proper, and could only be entered when credits were found upon an issue made pursuant to statute. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

ORAL EXAMINATION

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether to challenge garnishee for formal traverse. *Seaboard Finance Co. v. Ruppert* (D. C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's method of paying defendant's salary. *Id.*

RIGHT TO ORAL EXAMINATION

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

§ 15-305 [24: 288]. How attachments levied—Copy of writ—Notice—Garnishee's liability for retention.

NOTES TO DECISIONS

RETENTION BY GARNISHEE

Where garnishments were dismissed and no steps were taken to preserve lien, lien was extinguished and garnishee could pay funds to owner immediately. *Mandel v. Lofton* (D. C. Mun. App. 1952, 89 A. 2d 880).

§ 15-306 [24: 289]. Money in hands of marshal, coroner, executor, and administrator attachable.

NOTES TO DECISIONS

RETENTION OF SEIZED MONEY SUBJECT TO TAX LIEN

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposition thereof. *Welsh v. United States of America* (1955, 95 U. S. App. D. C. 93, 220 F. 2d 200).

§ 15-308. Pleading to the attachment—Right to jury trial.

NOTES OF DECISIONS

LIEN FOR ATTORNEY'S SERVICES

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d 48).

RIGHT TO ORAL EXAMINATION

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

VALIDITY OF JUDGMENT

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d, 48).

§ 15-309 [24:292]. Traversing garnishee's answers— Costs and counsel fee.

NOTES TO DECISIONS

ORAL EXAMINATION

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether to challenge garnishee for formal traverse. *Seaboard Finance Co. v. Ruppert* (D. C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's method of paying defendant's salary. *Id.*

RIGHT TO ORAL EXAMINATION

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

§ 15-310 [24:293]. Trial of right to attached property— Right to jury trial.

NOTES TO DECISIONS

COSTS

Where judgment creditor issued garnishment to employer of alleged judgment debtor, and alleged judgment debtor demanded trial right of property claiming that he was not same person as judgment debtor, and judgment creditor then entered a praecipe releasing attached credits, alleged judgment debtor was entitled to costs. *Hunter v. Hollywood Credit Clothing Co., Inc.* (D. C. Mun. App. 1950, 77 A. 2d 317).

EQUITABLE INTEREST

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment, seller had right to file petition in cause in which attachment was made, asserting ownership and demanding order for return thereof. *Cutler v. Cooper* (D. C. Mun. App. 1953, 96 A. 2d 360).

EVIDENCE OF NOTICE

On buyer's petition to recover automobile retained by vendor and which was attached by vendor's judgment creditor before recording of transfer of title, evidence established that attaching marshal had no notice of transfer of title and consequently statute providing that unrecorded transfer of title was invalid as to parties not having actual knowledge of transfer when seller retained possession of goods was applicable. *Barlow v. Langlands* (D. C. Mun. App. 1954, 110 A. 2d 688).

GENERALLY

When petition by alleged judgment debtor for trial right of attached property is filed, proceeding independent of main action is commenced with alleged judgment debtor as plaintiff and attaching party as defendant. *Hunter v. Hollywood Credit Clothing Co., Inc.* (D.C. Mun. App. 1950, 77 A. 2d 317).

LIEN FOR ATTORNEY'S SERVICES

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d 48).

PETITION ASSERTING OWNERSHIP

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment; rule of municipal court for

District of Columbia did not displace or supersede seller's long established statutory remedy of filing a petition in proceedings in which attachment had been made, asserting ownership and demanding an order for return thereof. *Cutler v. Cooper* (D. C. Mun. App. 1953, 96 A. 2d 360).

VALIDITY OF JUDGMENT

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d 48).

§ 15-312 [24:295]. Judgment against garnishee.

Subject to the provisions of sections 15-314 to 15-319, if a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, such judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution shall be had thereon. (Mar. 3, 1901, 31 Stat. 1361, ch. 854, § 1098; Aug. 4, 1959, 73 Stat. 277, Pub. L. 86-130, § 3.)

AMENDMENTS

1959—Section 3 of the Act of August 4, 1959, cited to text, struck out the word "If" at the beginning of the sentence and inserted in lieu thereof the phrase "Subject to the provisions of sections 15-314 to 15-319, if".

NOTES TO DECISIONS

AMENDMENT OF GARNISHMENT

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

ANSWERS TO INTERROGATORIES

The code section, providing that judgment shall be entered against garnishee if garnishee shall have failed to answer interrogatory served on him or to appear and show cause why judgment of condemnation should not be entered, is not mandatory as applied to situation where garnishee has appeared and shown several reasons why no judgment of condemnation or of recovery should be entered. *Horad v. Yee* (D. C. Mun. App. 1951, 82 A. 2d 916).

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

APPLICATION FOR JUDGMENT AGAINST GARNISHEE

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

ENTRY OF JUDGMENT

Without valid judgment of record against principal debtor, municipal court has no right to enter judgment of recovery against garnishee. *Horad v. Yee* (D. C. Mun. App. 1951, 82 A. 2d 916).

FAILURE TO ANSWER

Where judgment creditor caused a writ of attachment to issue on judgment addressed to savings and loan association as garnishee, requiring it to answer whether it was indebted to judgment debtor and notifying association that answer was required within ten days after service and that failure to answer might result in judgment being entered against association, and writ was served on assistant secretary-treasurer, who examined account of judgment debtor and found that account had been closed out and who concluded that no action was required and therefore placed writ in a file, court did not abuse its discretion in denying judgment creditor's motion for judgment against association for failure to answer. *L. Pastor v. Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

JUDICIAL DISCRETION

Under statute providing that if a garnishee fails to answer interrogatory served on him in connection with issuance of writ of attachment or fails to appear and show cause why a judgment of condemnation should not be entered, such judgment "shall" be entered against garnishee for whole amount of plaintiff's judgment and costs, the quoted word is not mandatory and court is not without discretion in the matter. *L. Pastor v. Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

Municipal Court has discretionary power after entering judgment of recovery against garnishee to set it aside for good cause shown, and such power to set aside a judgment presupposes power to refuse to enter it in the first instance for good cause shown. *Horad v. Yee* (D. C. Mun. App. 1951, 82 A. 2d 916).

In garnishment proceedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Id.*

LIEN FOR ATTORNEY'S SERVICES

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d 48).

MOTION TO VACATE JUDGMENT

Where garnishee made a motion to vacate default judgment more than six months after entry of judgment, and garnishee claimed that it had mailed its answer to the garnishment to the court, and it was possible that answer had been received by court but had been inadvertently misplaced or misfiled, court, if it should find that garnishee had mailed an answer to the court, could, in its discretion, vacate the default judgment against the garnishee, but was not compelled to vacate the default judgment, in view of fact that garnishee failed to appear and contest motion for judgment. *Fort Stevens Pharmacy v. Hollywood Credit Clothing Co.* (D. C. Mun. App. 1956, 126 F. 2d 308).

RIGHT TO ORAL EXAMINATION

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc. v. Pohanka Service, Inc.* (D. C. Mun. App. 1958, 138 A. 2d 668).

TRUST FUNDS

In proceeding to enforce child support judgment against children's father's interest as beneficiary of trust,

trial court could stay execution, as to that portion of trust fund not immediately due, until same became due. *Seidenberg et al. v. Seidenberg* (1957, 101 U. S. App. D. C. 367, 249 F. 2d 123).

VACATED JUDGMENT

In vacating default judgment against principal debtor and placing case on calendar for trial, municipal court, by same stroke of pen obliterated any right of creditor under vacated judgment to demand judgment against garnishee as to credits in favor of vacated-judgment debtor in such garnishee's hands. *Horad v. Yee* (D. C. Mun. App. 1951, 82 A. 2d 916).

VALIDITY OF JUDGMENT

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Abe M. Draisner et al. v. Liss Realty Co., Inc.* (1955, 97 U. S. App. D. C. 77, 228 F. 2d 48).

§ 15-314. Attachment of wages—Percentage limitations—Priority of attachments.

Notwithstanding any other provision of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, such attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of (1) 10 per centum of so much of the gross wages as does not exceed \$200 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month, plus (2) 20 per centum of so much of the gross wages as exceeds \$200 but does not exceed \$500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month, plus (3) 50 per centum of so much of the gross wages as exceeds \$500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month. Such levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event shall moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgement debtor shall be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16-308. (Mar. 3, 1901, ch. 854, § 1104A(a), as added Aug. 4, 1959, 73 Stat. 275, Pub. L. 86-130, § 1.)

APPLICABILITY OF ACT OF AUGUST 4, 1959

Section 6 of the act of August 4, 1959, provides as follows:

The amendments made by this Act shall apply only with respect to attachments upon wages (as defined in section 1104A(f) of this Act) which are issued on or after sixty days from the date of the enactment of this Act.

The amendments made by the act are classified to sections 15-314 to 15-320 and sections 15-304, 15-312, 15-403, and 16-312. Section 1104A(f) will be found in 15-317.

CROSS REFERENCE

For provisions regarding attachments generally and priorities, see § 16-308.

REFERENCE IN TEXT

The provisions "of this chapter" referred to in this section are set out in section 15-201 to 15-206, 15-208 to 15-212, 15-214, 15-215 to 15-218, 15-301 to 15-306, 15-307 to 15-313.

SEPARABILITY

Section 7 of the act of August 4, 1959, provides as follows:

If any section, subdivision, or clause of sections 15-314 to 15-319 shall be held to be invalid, the remainder of the Act shall not be affected thereby.

§ 15-315. Employer's duty to withhold and make payments—Percentage to be withheld.

It shall be the duty and responsibility of any employer upon whom an attachment is served, and who at such time is indebted for wages to an employee who is the judgment debtor named in such attachment, or who becomes so indebted to such judgment debtor in the future and while such attachment remains a lien upon such indebtedness, to withhold and pay to the judgment creditor, or his legal representative, within fifteen days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until such attachment is wholly satisfied: *Provided*, That upon written notice of any court proceeding attacking such attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating such proceedings. Any payments made by an employer-garnishee in conformity with this subsection shall be a discharge of the liability of the employer to the judgment debtor to the extent of such payment. Under this subsection the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$200, nor more than 20 per centum of the gross wages in excess of \$200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$500. (Mar. 3, 1901, ch. 854, § 1104A(b), as added Aug. 4, 1959, 73 Stat. 275, Pub. L. 86-130, § 1.)

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

CROSS REFERENCE

For provisions regarding exemptions see § 15-403.

§ 15-316. Judgment creditor to file receipts, in court, of amount collected.

It shall be the duty and responsibility of the judgment creditor (1) to file with the clerk of the court, every three months after the serving of an attach-

ment, a receipt showing the amount received and the balance due under the attachment as of the date of filing, and (2) to file a final receipt with the court, furnish a copy thereof to the employer-garnishee, and to obtain a vacation of the attachment within twenty days after the attachment has been satisfied. If the judgment creditor fails to file any of the receipts prescribed in this subsection, any interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee, suffered by, and tax costs in favor of, the party filing the motion to compel the accounting. (Mar. 3, 1901, ch. 854, § 1104A(c), as added Aug. 4, 1959, 73 Stat. 276, Pub. L. 86-130, § 1.)

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

§ 15-317. Penalty for failure of employer-garnishee to pay—Lapse of attachment—"Wages" defined.

(a) If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this section of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which such failure occurs.

(b) If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, such attachment shall lapse and no further deduction shall be made thereon unless the judgment debtor is reinstated or reemployed within ninety days after such resignation or dismissal.

(c) For purposes of sections 15-314 to 15-319, the term "wages" means—

(1) wages, salary, commissions, or other remuneration for services performed by an employee for his employer, including any such remuneration measured partly or wholly by percentages or share of profits, or by other sums based upon work done or results produced, whether or not the employee is given a drawing account, and

(2) any drawing account made available to an employee by his employer.

The term wages shall not include any amount paid or payable to an employee who is not a resident of the District of Columbia as remuneration for services performed within the District of Columbia, if the period for which the employee is engaged by the employer to perform such services within the District of Columbia is less than fifteen consecutive days' duration; and any such amount shall be subject to attachment without regard to this section. (Mar. 3, 1901, ch. 854, § 1104A(d, e, f), as added Aug. 4, 1959, 73 Stat. 276, Pub. L. 86-130, § 1.)

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

§ 15-318. Percentage limitations, in cases of judgments for support, do not apply.

The per centum limitations prescribed by section 15-314 shall not apply in the case of execution upon

a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's wife, or former wife, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this section. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Mar. 3, 1901, ch. 854, § 1104A(g), as added Aug. 4, 1959, 73 Stat. 276, Pub. L. 86-130, § 1.)

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

§ 15-319. Municipal Court attachments—Lapse—Validity—Installment payments—When court may direct payment of—Quashing of attachments.

(a) No attachment issued by the municipal court for the District of Columbia upon a judgment of such court duly docketed in the United States District Court for the District of Columbia, and levied within six years from the date of such judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 11-755(c).

(b) Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that such salary or compensation is merely colorable and designed to defraud or impede the creditors of such debtor, the court may direct such employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by such judgment debtor under his said employment or upon said debtor's then earning ability.

(c) Where an attachment levied under sections 15-314 to 15-319 is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of any interested person, may quash such attachment upon satisfactory proof that such judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims. (Mar. 3, 1901, ch. 854, § 1104A(h, i, j), as added Aug. 4, 1959, 73 Stat. 277, Pub. L. 86-130, § 1.)

CROSS REFERENCE

For provisions relating to method of making levies, avoidance of attachment etc., see section 16-312.

For other provisions relating to quashing of attachments see section 16-307.

APPLICABILITY OF ACT OF AUG. 4, 1959

See note to section 15-314.

§ 15-320. Rules of procedure.

The judges of the municipal court for the District of Columbia and of the United States District Court

for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this Act. (Aug. 4, 1959, 73 Stat. 278, Pub. L. 86-130, § 8.)

REFERENCE IN TEXT

The act referred to in this section is classified to sections 15-314 to 15-320 and sections 15-304, 15-312, 15-403, and 16-312.

Chapter 4.—EXEMPTIONS

§ 15-401 [24:311]. Exempt property of householder—Property in transitu—Exception—Debt for wages.

NOTES TO DECISIONS

"HOUSEHOLDER" DEFINED

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within section of District of Columbia Code granting to householder residing in District of Columbia exemption of furnishings not exceeding \$300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed \$300 in value, from assets that would be set aside to satisfy her creditors. *J. Frank v. D. J. Hyman Trustee, etc.* (1958, 104 U.S. App. D.C. 203, 260 F. 2d 721).

LIBERAL CONSTRUCTION

A liberal construction is to be given to a statute exempting property from assets that would be set aside to satisfy creditors. *J. Frank v. D. J. Hyman, etc.* (1958, 104 U.S. App. D.C. 203, 260 F. 2d 721).

§ 15-403 [24:313]. Earnings—Exemptions.

(a) The earnings (other than wages, as defined in sections 15-314 to 15-319), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$200 each month, of any person residing in the District of Columbia, or of any person who earns the major portions of his or her livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in said District shall be exempt from attachment, levy, seizure, or sale upon such process, and the same shall not be seized, levied on, taken, reached, or sold by attachment, execution, or any other process or proceedings of any court, judge, or other officer of and in said District: *Provided, however,* That where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife shall be the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in sections 15-314 to 15-319), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$60 each month for two months preceding the date of attachment of all persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, shall be entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding

\$300 in value, and mechanic's tools not exceeding \$200 in value, shall also be exempt.

* * * * *

(As amended Apr. 15, 1952, 66 Stat. 59, ch. 206, § 1; Aug. 4, 1959, 73 Stat. 277, Pub. L. 86-130, § 4.)

AMENDMENTS

1959—Section 4 of the act of August 4, 1959, struck out the words "earnings, salary" each place they appeared in subsections (a) and (b) and inserted in lieu thereof the words: "earnings (other than wages, as defined in sections 15-314 to 15-319)" and also struck out the word "salaries" in the proviso clause of subsection (a).

1952—The act of April 15, 1952, raised the exemption in subsection (a) from \$100 to \$200.

APPLICABILITY OF ACT OF AUGUST 4, 1959

See note to section 15-314.

NOTES TO DECISIONS

DISCRETION OF COURT

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc. v. Westinghouse Electric Supply, Inc., et al.* (D. C. Mun. App. 1957, 130 A. 2d 777).

"HOUSEHOLDER" DEFINED

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within section of District of Columbia Code granting to householder residing in District of Columbia exemption of furnishings not exceeding \$300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed \$300 in value, from assets that would be set aside to satisfy her

creditors. *J. Frank v. D. J. Hyman Trustee, etc.* (1958, 104 U.S. App. 203, 260 F. 2d 721).

JUDICIAL DISCRETION

In garnishment proceedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Horad v. Yee* (D. C. Mun. App. 1951, 82 A. 2d 916).

REHEARING ON EXEMPTION CLAIM

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc. v. Westinghouse Electric Supply, Inc. et al.* (D. C. Mun. App. 1957, 130 A. 2d 777).

UNEMPLOYMENT COMPENSATION

Court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining wife's exemption from attachment, in absence of showing that benefits were mingled with wages or that debt was for necessities furnished during unemployment. *Washington Telephone Federal Credit Union v. V. Breeden* (D.C. Mun. App. 1959, 151 A. 2d 774).

VALUE OF ROOM AND MEALS

Value of room and meals furnished by employer to domestic servant were properly excluded from salary or earnings under wage exemption statute. *Hollywood Credit Clothing Co., Inc. v. Gladys Jones* (D.C. Mun. App. 1955, 117 A. 2d 226).

TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS

Chapter 2.—ADOPTION

Sec.

- 16-201 to 16-207. Repealed.
- 16-208. Purpose.
- 16-209. Definitions.
- 16-210. Jurisdiction of the United States District Court for the District of Columbia.
- 16-211. Persons who may adopt.
- 16-212. Persons adopted.
- 16-213. Consent.
- 16-214. Petition for adoption.
- 16-215. Notice of adoption proceedings.
- 16-216. Investigation—Report—Recommendation.
- 16-217. Investigation when adoptee is an adult.
- 16-218. Adoption proceedings.
- 16-219. Finality of decrees of adoption.
- 16-220. Appeal.
- 16-221. Records and papers—Sealing and inspection.
- 16-222. Legal effects of adoption.
- 16-223. Birth certificates.
- 16-224. Term “child” to include adopted persons.
- 16-225. Provisions not retroactive—Prior orders and decrees.

§ 16-201 [15: 1a]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 806, ch. 774, § 1, as amended June 20, 1939, 53 Stat. 844, ch. 226 related to the jurisdiction of the United States District Court for the District of Columbia which is now covered by section 16-210.

NOTES TO DECISIONS UNDER PRIOR LAW

COURT'S AUTHORITY MEASURED BY STATUTE

Adoption is a creature of statute, and the court's authority must necessarily be measured by the statutory law. *Cooley v. Washington* (D. C. Mun. App. 1957, 136 A. 2d 583).

ENTRY OF FINAL DECREE

In 1937 statute providing that “entry of final decree” of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an “entry of final decree” of adoption within statute. *Hall et al. v. Scarlett et al.* (1951, 88 U. S. App. D. C. 201, 188 F. 2d 990, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

INTERRACIAL ADOPTIONS

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between “social status” of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1955, 97 U. S. App. D. C. 99, 228 F. 2d 446).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16-202 [15: 1b]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 807, ch. 774, § 2, related to consent of various persons in adoption proceedings now covered by section 16-213.

NOTES TO DECISIONS UNDER PRIOR LAW

ABUSE OF DISCRETION

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *L. F. Bell et al. v. G. H. Leonard; A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

CONCLUSIVENESS OF AGREEMENT

Where full consents to adoption of minor child were signed by natural parents and contained acknowledgment of parental status, name of infant, where it was born and date thereof and were accompanied by statement demonstrating that both parties fully understood their legal rights respecting child and that they surrendered her to others unknown for purpose of adoption as prescribed by laws of state of place in which adoption was to be effected and that they were to remain unknown to infant and adopting parents, such consents were clear, unequivocal, and, having been made voluntarily, were binding upon signatories. *In re Adoption of a Minor Child* (1954, 127 F. Supp. 256).

CONSENT

A non-parent may not obtain possession of a child and thereafter invoke processes of court to consummate its adoption against wishes and without consent of child's mother. *L. F. Bell et al. v. G. H. Leonard; A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

Where property settlement agreement of husband and wife included provision relative to custody of child, and creation of trust for support, incorporation of that agreement in Florida divorce decree, without a limitation as to any part thereof, was an incorporation of the custody provisions for purpose of District of Columbia statute declaring that consent of natural parent to adoption is not necessary where parent has been permanently deprived of custody of the adoptee by court order. *In re Adoption of a Minor* (1954, 94 U. S. App. D. C. 131, 214 F. 2d 844).

Where decree granting petition for adoption of infant daughter of petitioner's wife by her former husband is supported by sufficient fact findings, which evidence supported, and conclusions of law, and recites that natural father's consent to adoption should be dispensed with for extraordinary cause, which constitutes one of statutory grounds, decree should not be set aside by Court of Appeals. *In re Adoption of a Minor* (1953, 92 U. S. App. D. C. 163, 204 F. 2d 55).

DECREE, REQUIREMENTS OF

Where court granted petition for adoption of infant although natural father of infant did not consent to adoption, and trial court made no finding or ruling as to any of the permissive statutory grounds for granting of such petition when natural parent refuses to consent to adoption, decree was not in form or in context which would give it requisite legal basis. *In re Adoption of a Minor* (1952, 90 U. S. App. D. C. 107, 194 F. 2d 325).

ENTRY OF FINAL DECREE

In 1937 statute providing that “entry of final decree” of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree

under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (188 F. 2d 990, 88 U. S. App. D. C. 201, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

LAW OF FORUM

Even though natural mother signed consent for adoption of her minor child in state of Pennsylvania, where petition for adoption was filed in District of Columbia, District of Columbia law was controlling, and natural mother could not withdraw written consent as late as time of hearing on petition for adoption, as allowed by Pennsylvania law. *In re Adoption of a Minor Child* (1954, 127 F. Supp. 256).

Under District of Columbia law, consent for adoption of minor child, signed by natural mother, where otherwise legally sufficient, is not subject to objection that it does not reveal identity of adoptive parents. *Id.*

PERMANENT DEPRIVATION OF CUSTODY

Under District of Columbia statute dispensing with necessity of consent of natural parent to adoption where parent has been permanently deprived of custody of the adoptee by court order, father who, by Florida divorce decree incorporating by reference a property settlement agreement including custody provision, had been deprived of even his right of visitation in that decree gave entire control and custody to mother, with right being in child to visit and see father, was "permanently deprived of custody", and could not object to adoption because his consent was not given. *In re Adoption of a Minor* (1954, 94 U. S. App. D. C. 131, 214 F. 2d 844).

STATUTORY GROUND, ESTABLISHMENT OF

If petition for adoption of infant without consent of natural father of infant is granted on permissive statutory ground, decree should so state, and basis for such conclusion, though not necessary to be recited in decree itself, should appear in findings, or in some other matter, such as in opinion of court, with adequate evidentiary support in record, and Court of Appeals could not make such determination in first instance. *In re Adoption of a Minor* (1952, 90 U. S. App. D. C. 107, 194 F. 2d 325).

§ 16-203 [15:1c]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 807, ch. 774, § 3, related to the consideration of the petition for adoption and entry of a decree now covered by section 16-218.

NOTES TO DECISIONS UNDER PRIOR LAW

BEST INTERESTS OF INFANT

Under statute providing that after considering adoption petition, the consents, and evidence presented an adoption decree may be entered if court is satisfied that adoptee is physically, mentally, and otherwise suitable for adoption and that petitioner is fit and a change will be for best interests of adoptee, primary duty of District Court is to determine the best interests of the infant. *In re Adoption of a Minor* (1955, 97 U. S. App. D. C. 99, 228 F. 2d 446).

ENTRY OF FINAL DECREE

In 1937 statute providing that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (1951, 88 U. S. App. D. C. 201, 188 F. 2d 990, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

INTERRACIAL ADOPTIONS

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro,

refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1955, 97 U. S. App. D. C. 99, 228 F. 2d 446).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16-204 [15:1d]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 807, ch. 774, § 4, as amended June 6, 1940, 54 Stat. 235, ch. 244 and June 26, 1946, 60 Stat. 314, ch. 499, related to birth certificates now covered by section 16-223.

NOTES TO DECISIONS UNDER PRIOR LAW

ENTRY OF FINAL DECREE

In 1937 statute providing that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (1951, 88 U. S. App. D. C. 201, 188 F. 2d 990, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

§ 16-205 [15:1e]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 808, ch. 774, § 5, related to the legal effects of adoption now covered by section 16-222.

NOTES TO DECISIONS UNDER PRIOR LAW

CONSTRUCTION

Under 1954 statute of District of Columbia providing that a final decree of adoption shall establish relationship of natural parent and natural child between adopter and adoptee for all purposes, including mutual rights of inheritance and succession the same as if adoptee was born to adopter, and that adoptee shall take from, through, and as representative of his adoptive parents in same manner as a child by birth, adopted child of testatrix' daughter acquired a right to inherit from testatrix, who died in 1958, notwithstanding fact that adopting parent died prior to enactment of such statute, and adopted child had standing to file a caveat to the will. *In re Estate of S. C. Gray etc., deceased* (1958, 168 F. Supp. 124).

Statute providing that entry of a final decree of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adopter, except that adoptee shall not inherit from collateral relatives or parents of adopter though such collateral relatives and parents of adopter shall have right of inheritance from adoptee, did not entitle adopted children of beneficiary of testamentary trust created by aunt of beneficiary to take that share which natural children of beneficiary would take under will on death of beneficiary, where it was obvious from will that testatrix definitely had in mind descent of her property through blood relatives to persons of her own blood. *Noreen et al. v. Sparks et al.* (1952, 103 F. Supp. 588).

Statute providing that entry of a final decree of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adopter, except that adoptee shall not inherit from collateral relatives or parents of adopter though such collateral relatives and parents of adopter shall have right of inheritance from adoptee, does not preclude adopted children from taking property devised to them by will of collateral relative of their adopting mother, if it clearly appears that such was

intent of testatrix, but affords no basis for conclusion that such was the intent. *Id.*

ENTRY OF FINAL DECREE

In 1937 statute providing that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (1951, 88 U. S. App. D. C. 201, 188 F. 2d 990, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

NATURAL PARENTS RIGHTS AFTER DECREE

Under adoption statute, final decree of adoption terminated former relationship of natural parent and natural child, and on death of adopters the right of natural mother to custody of child was not revived. *Cooley v. Washington* (D. C. Mun. App. 1957, 136 A. 2d 583).

§ 16-206 [15:1f]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 808, ch. 774, § 6, related to records and papers in adoption proceedings now covered by section 16-221.

NOTES TO DECISIONS UNDER PRIOR LAW

ENTRY OF FINAL DECREE

In 1937 statute providing that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (1951, 88 U. S. App. D. C. 201, 188 F. 2d 990, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

§ 16-207 [15:1g]. Repealed. June 8, 1954, 68 Stat. 246, ch. 272, § 18.

Section, act of Aug. 25, 1937, 50 Stat. 808, ch. 774, § 7, contained the provisions of that act providing that the act would not have retroactive effect. Similar provisions are set out in new section 16-225.

NOTES TO DECISIONS UNDER PRIOR LAW

ENTRY OF FINAL DECREE

In 1937 statute providing that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption within statute. *Hall et al. v. Scarlett et al.* (188 F. 2d 990, 88 U. S. App. D. C. 201, certiorari denied 341 U. S. 925, 71 S. Ct. 796).

§ 16-208. Purpose.

The Congress of the United States hereby declares its conviction that the policies and procedures for adoption contained in this chapter are socially necessary and desirable in the District of Columbia, having as their purpose the threefold protection of (1) the adoptive child, from unnecessary separation from his natural parents and from adoption by persons unfit to have such responsibility; (2) the natural parents, from hurried and abrupt decisions to give up the child; and (3) the adopting parents, by

providing them information about the child and his background, and protecting them from subsequent disturbance of their relationships with the child by natural parents. (June 8, 1954, 68 Stat. 241, ch. 272, § 1.)

SEPARABILITY

The act of June 8, 1954, provided as follows in section 18 (c) of the act:

"(c) If any provisions of this Act, or the applicability thereof to any person or set of circumstances, is held invalid, the remainder of this Act and the applicability thereof to other persons and sets of circumstances shall not thereby be affected."

§ 16-209. Definitions.

When used in this chapter, the term—

(1) "Commissioners" means the Board of Commissioners of the District of Columbia, or their designated agents;

(2) "District" means the District of Columbia;

(3) "licensed child-placing agency" means a child-placing agency licensed under the laws of the District of Columbia; and

(4) "adoptee" means a person with respect to whose adoption a petition has been filed under this chapter or with respect to whom an interlocutory or final decree of adoption is in effect. (June 8, 1954, 68 Stat. 241, ch. 272, § 2.)

§ 16-210. Jurisdiction of the United States District Court for the District of Columbia.

(a) Subject to the provisions of subsection (b), jurisdiction is hereby conferred upon the Domestic Relations Branch of the Municipal Court for the District of Columbia to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction is conferred if any of the following circumstances exist:

(1) If petitioner is a legal resident of the District.

(2) If petitioner has actually resided in the District for at least one year next preceding the filing of the petition.

(3) If the child to be adopted is in the legal care, custody, or control of the Commissioners or a licensed child-placing agency. (June 8, 1954, 68 Stat. 241, ch. 272, § 3; April 11, 1956, 70 Stat. 113, ch. 204, § 107 (b).)

AMENDMENT

1956—Section 107 (b) of the act of April 11, 1956, Public Law 486, ch. 204, 70 Stat. 112, struck out "United States District" and inserted in lieu thereof "Domestic Relations Branch of the Municipal".

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see sections 11-758 to 11-770.

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, makes all sections (except sections 105, 106 and 107, classified to sections 11-762, 11-763, 16-210, 16-220, 16-416 and 32-786) effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) (sec. 11-752).

§ 16-211. Persons who may adopt.

Any person may petition the court for a decree of adoption. No petition shall be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the adoptee, such natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition shall be amended accordingly. (June 8, 1954, 68 Stat. 241, ch. 272, § 4.)

NOTES TO DECISIONS

INTERRACIAL ADOPTIONS

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1955, 97 U. S. App. D. C. 99, 228 F. 2d 446).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16-212. Persons adopted.

Any person, whether a minor or an adult, may be adopted. (June 8, 1954, 68 Stat. 241, ch. 272, § 5.)

§ 16-213. Consent.

(a) No petition for adoption shall be granted by the court unless there is filed with the petition a written statement of consent, as specified in this section, which is signed and acknowledged by an officer authorized before law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Commissioners, or unless a relinquishment of parental rights with respect to the adoptee has been recorded and filed as provided in section 32-786.

(b) Consent to any proposed adoption of an adoptee under twenty-one years of age shall be obtained.

(1) from the adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the subparagraphs a through g below, as follows:

a. both parents, if they are or were married and are both alive; or

b. the living parent of the adoptee, if one of the parents is dead; or

c. the mother in the case of an adoptee born out of wedlock, unless the adoptee has been legitimated according to the laws of any jurisdiction, in which case the consent of the father shall also be required if he is alive; or

d. the mother of an adoptee born in wedlock, if the illegitimacy of the adoptee has been established to the satisfaction of the court; or

e. the court appointed guardian of the adoptee; or

f. a licensed child-placing agency or the Commissioners in case the parental rights of the parent or parents have been terminated by any court of competent jurisdiction or by a release of parental rights to the Commissioners or licensed child-placing

agency, based upon consents obtained in accordance with (2) a through e above and the adoptee has been lawfully placed under the care and custody of such agency or the Commissioners; or

g. the Commissioners in any situation not herein above provided for.

(c) Minority of a natural parent shall not be a bar to such parent's consent to adoption.

(d) In the event a parent whose consent is hereinbefore required, after such notice as the court shall direct, cannot be located, or has abandoned the adoptee and voluntarily failed to contribute to the adoptee's support for a period of at least six months next preceding the date of the filing of the petition, the consent of such parent shall not be required.

(e) The court may grant a petition for adoption without any of the consents hereinabove specified, if, after a hearing, the court finds that such consent or consents are withheld contrary to the best interests of the child.

(f) Persons over twenty-one years of age may be adopted, on the petition of the adopting parent or parents, with the consent of adoptee, provided the court is satisfied that the adoption should be granted. (June 8, 1954, 68 Stat. 242, ch. 272, § 6.)

NOTES TO DECISIONS

ABUSE OF DISCRETION

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *L. F. Bell et al. v. G. H. Leonard*; *A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

CONSENT

A non-parent may not obtain possession of a child and thereafter invoke processes of court to consummate its adoption against wishes and without consent of child's mother. *L. F. Bell et al. v. G. H. Leonard*; *A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

§ 16-214. Petition for adoption.

Every petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of _____ for adoption." The petition or the exhibits annexed thereto shall contain the following information:

(1) The name, sex, date, and place of birth of the adoptee, and the names and addresses and residences of the natural parents, if known to the petitioner, except that in any adoption proceeding which is consented to by the Commissioners or a licensed child-placing agency, the names, addresses and residence of the natural parents shall not be set forth.

(2) The name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner.

(3) The relationship, if any, of the adoptee to the petitioner.

(4) The race and religion of the adoptee, or his natural parent or parents.

(5) The race and religion of the petitioner.

(6) The date that the adoptee commenced residing with petitioner.

(7) Any change of name which may be desired.

If any of the above facts are unknown to the petitioner, the petitioner shall state this fact. If any of the above facts are known to the Commissioners or a licensed child-placing agency, which as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Commissioners or such licensed agency with the court. If more than one petitioner joins in a petition, the requirements of this section shall be applicable to each petitioner. (June 8, 1954, 68 Stat. 242, ch. 272, § 7.)

§ 16-215. Notice of adoption proceedings.

Due notice of pending adoption proceedings shall be given immediately upon the filing of a petition by summons, by registered letter sent to the addressee only, or otherwise, as the court may order to be given, to any person or persons whose consent is necessary thereto, except that any party or parties who have formally given their consent to the proposed adoption, as provided elsewhere in this chapter, shall be held thereby to have waived the requirement of notice to them under the provisions of this section. (June 8, 1954, 68 Stat. 243, ch. 272, § 8.)

§ 16-216. Investigation—Report—Recommendation.

Upon the filing of a petition the court shall, except in a case that is supervised by a licensed child-placing agency and except as provided in section 16-217, refer the petition to the Commissioners for investigation, report, and recommendation. Where the case is supervised by such a licensed child-placing agency the court shall refer the petition to such agency for investigation, report, and recommendation. The investigation, report, and recommendation shall include—

(1) an investigation—

(A) of the truth of the allegations of the petition;

(B) of the environment, antecedents, and assets, if any, of the adoptee, for the purpose of ascertaining whether he is a proper subject for adoption;

(C) of the home of the petitioner, to determine whether the home is a suitable one for the adoptee;

(D) of any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge;

(2) a written report to the court of the findings of such investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the adoptee to the petitioner, as hereinafter set forth.

Any written report submitted to the court shall be filed with, and become part of, the records in the case. (June 8, 1954, 68 Stat. 243, ch. 272, § 9.)

§ 16-217. Investigation when adoptee is an adult.

Whenever the adoptee is an adult or whenever the petitioner is a spouse of the natural parent of the

adoptee, and the natural parent consents to the adoption or joins in the petition for adoption, the court may in its discretion dispense with the investigation, report, and interlocutory decree provided for in this chapter. (June 8, 1954, 68 Stat. 244, ch. 272, § 10.)

§ 16-218. Adoption proceedings.

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16-215 to the court and thereupon the court shall proceed to act upon the petition.

(b) No final decree of adoption shall be entered unless the adoptee shall have been living with the petitioner at least six months. After considering the petition, the consents, and such evidence as the parties and any other properly interested person may wish to present, the court may enter a final or interlocutory decree of adoption if it is satisfied—

(1) that adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) that the petitioner is fit and able to give the adoptee a proper home and education; and

(3) that the adoption will be for the best interests of adoptee. If it shall appear in the interest of the adoptee, the court may enter an interlocutory decree of adoption, which decree shall by its terms automatically become a final decree of adoption on a day therein named, which day shall not be less than six months, nor more than one year, from the date of entry of such interlocutory decree unless in the interim such decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(c) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before such revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all such interested persons or parties to be heard.

(d) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers in a sealed courtroom with as little publicity as the court deems appropriate. (June 8, 1954, 68 Stat. 244, ch. 272, § 11.)

NOTES TO DECISIONS

INTERRACIAL ADOPTIONS

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1955, 97 U.S. App. D.C. 99, 228 F. 2d 446).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16-219. Finality of decrees of adoption.

No attempt to invalidate a final decree of adoption by reason of any jurisdictional or procedural defect shall be received by any court of the District, unless regularly filed with such court within one year following the time the final decree became effective. (June 8, 1954, 68 Stat. 244, ch. 272, § 12.)

§ 16-220. Appeal.

Any party to an adoption proceeding may appeal to the Court of Appeals for the District of Columbia from any interlocutory or final order or decree of adoption of the Domestic Relations Branch of the Municipal Court for the District of Columbia. (June 8, 1954, 68 Stat. 245, ch. 272, § 13; April 11, 1956, 70 Stat. 113, ch. 204, § 107 (b).)

AMENDMENTS

1956—Section 107 (b) of the act of April 11, 1956, Public Law 486, ch. 204, 70 Stat. 112, struck out "United States District" and inserted in lieu thereof "Domestic Relations Branch of the Municipal."

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see sections 11-758 to 11-770.

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, makes all sections (except secs. 105, 106 and 107, classified to secs. 11-762, 11-763, 16-416, 16-210, 16-220 and 32-786) effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) (sec. 11-752).

§ 16-221. Records and papers.—Sealing and inspection.

Records and papers in adoption proceedings shall, from and after the filing of the petition, be sealed and shall not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or projected. The clerk of the court shall keep separate dockets for adoption proceedings. (June 8, 1954, 68 Stat. 245, ch. 272, § 14.)

§ 16-222. Legal effects of adoption.

(a) A final decree of adoption shall establish the relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession the same as if adoptee was born to adoptor. Such adoptee shall take from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if such adoptee had been born to such adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, shall be cut off, except that in the event one of the natural parents is the spouse of the adoptor, then the rights and relations as between adoptee, such natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, shall in nowise be altered.

(b) An interlocutory decree of adoption shall, while it is in force, have the same legal effects as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners shall be as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of adoptor unless the decree shall otherwise provide, and the given name of the adoptee may be fixed or changed at the same time. (June 8, 1954, 68 Stat. 245, ch. 272, § 15.)

NOTES TO DECISIONS**CONSTRUCTION**

Under 1954 statute of District of Columbia providing that a final decree of adoption shall establish relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession the same as if adoptee was born to adoptor, and that adoptee shall take from, through, and as representative of his adoptive parents in same manner as a child by birth, adopted child of testatrix' daughter acquired a right to inherit from testatrix, who died in 1958, notwithstanding fact that adopting parent died prior to enactment of such statute, and adopted child had standing to file a caveat to the will. *In re Estate of S. C. Gray, etc., deceased* (1958, 168 F. Supp. 124).

§ 16-223. Birth certificates.

(a) Notice of a final decree of adoption shall be sent to the Commissioners. The Commissioners, unless otherwise requested in the petition by the adoptors, shall cause to be made a new record of the birth in the new name and with the names of the adoptors and shall then cause to be sealed and filed the original birth certificate with the order of the court and such sealed package shall be opened only by order of the court.

(b) If the adoption occurred outside of the District either before or after August 25, 1937, upon filing with the Commissioners a certified copy of the final decree of adoption, the Commissioners shall cause to be made a new record of the birth in the new name and with the names of the adoptors and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption, and such sealed package shall be opened only by order of a court of competent jurisdiction.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adoptor, furnish him with a certified copy of the final decree of adoption.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in such proceeding and upon presentation of a certified copy of said order the Commissioners shall cause to be made a new record of the birth in the new name and with the names of the adoptors and shall then cause to be sealed and filed the original birth certificate with the order of the court, and such sealed package shall be opened only by order of the court. (June 8, 1954, 68 Stat. 245, ch. 272, § 16.)

§ 16-224. Term "child" to include adopted persons.

The term "child" or its equivalent in a deed, grant, will, or other written instrument shall, in the District, be held to include any adopted person, unless the contrary plainly appears by the terms thereof, whether or not such instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective. (June 8, 1954, 68 Stat. 246, ch. 272, § 17.)

§ 16-225. Provisions not retroactive—Prior orders and decrees.

The provisions of this chapter shall have no retroactive effect except to the extent that they specifically so provide and shall not be construed as affecting in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954, and all proceedings instituted and pending on June 8, 1954, shall be carried to their final determination in accordance with former sections 16-201 to 16-207, and all orders and decrees entered therein shall remain valid and binding on all parties thereby affected. (June 8, 1954, 68 Stat. 246, ch. 272, § 18 (b).)

NOTES TO DECISIONS**INTERRACIAL ADOPTIONS**

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1955, 97 U. S. App. D. C. 99, 228 F. 2d 446).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

Chapter 3.—ATTACHMENT AND GARNISHMENT**§ 16-301 [24: 121]. Attachment before judgment—Bond and affidavit—Causes.****NOTES TO DECISIONS****AFFIDAVITS**

Affidavit preliminary to attachment before judgment, which stated the grounds for plaintiff's claim, a just right to recover, a prescribed type of action, and that defendant was a nonresident, was sufficient. *Morfessis v. Thomas* (D. C. Mun. App. 1952, 91 A. 2d 833).

In action by nonresident plaintiff to recover debt wherein nonresident defendant claimed that situs of debt was in Maryland but made no affidavit and submitted no proof in support thereof, Municipal Court for the District of Columbia did not abuse its discretion in refusing to quash writ of attachment before judgment under the rule of forum non conveniens. *Rice v. Salnier* (D. C. Mun. App. 1952, 86 A. 2d 175).

AMENDMENT OF GARNISHMENT

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

AMOUNT OF RECOVERY

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in

attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534).

APPEALABLE ORDERS

Under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *W. N. Clark v. District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

APPLICATION FOR JUDGMENT AGAINST GARNISHEE

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until termination of action. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

EVIDENCE OF INDEBTEDNESS

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

FOREIGN CORPORATION

Corporation, which had an office in the District of Columbia, was subject in the District of Columbia to garnishment of credits in its hands belonging to an employee, who was a resident of Maryland, who performed his work in Maryland, and whose wages were payable in Maryland. *Marvins Credit, Inc. v. General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

NONRESIDENT

For purposes of attachment before judgment on ground that defendant is a nonresident, residence is the test, and the fact that a defendant had an established office in the District of Columbia and presumably was available for personal services was not material. *National Brick & Supply Co. v. Bradshaw* (D. C. Mun. App. 1952, 91 A. 2d 833).

Under statute providing that in action for recovery of debt, clerk shall issue writ of attachment if plaintiff files affidavit stating that defendant is not a resident of the District of Columbia, plaintiff who was nonresident of the District was entitled to implement his suit by writ of attachment before judgment. *Rice v. Salnier* (D. C. Mun. App. 1952, 86 A. 2d 175).

PREVIOUS DECISIONS, EFFECT OF

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have

trial of issue as to such alleged preferences at present trial. *Troshinsky v. Feldman* (D. C. Mun. App. 1951, 81 A. 2d 91).

QUASHING WRIT OF ATTACHMENT

Defendant who, in traversing attachment before judgment obtained on the ground of nonresidency, admitted that his home was in Maryland and denied that he owed the amount claimed and averred that statements in the plaintiff's affidavit for attachment were not true, traversed only main issue in complaint and was not entitled to have attachment quashed. *National Brick & Supply Co., Inc. v. Bradshaw* (D. C. Mun. App. 1952, 91 A. 2d 838).

REVERSION INTEREST IN TRUST FUNDS

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and he possessed a vested reversion and in May, 1960, he would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *K. King, etc., v. R. L. Fay et al.* (1958, 169 F. Supp. 934).

RIGHT OF ATTACHMENT

Fact that plaintiff may not prevail when case comes to trial does not mean he had no right of attachment before judgment. *Morfessis v. Thomas* (D. C. Mun. App. 1952, 91 A. 2d 833).

TRIAL OF MAIN ISSUE

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis v. Thomas* (D. C. Mun. App. 1952, 91 A. 2d 833).

WRONGFUL SUIT OUT OF ATTACHMENT

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534).

§ 16-307 [24:127]. Traversing affidavits—Counter-affidavits—Quashing writ of attachment—Trial of issue—Notice—Oral testimony—Jury.

NOTES TO DECISIONS

PURPOSE

The purpose of the traverse of an attachment before judgment is to present to the court for determination the issue of whether the facts set forth in the plaintiff's affidavit as ground for issuing the attachment are true, and whether there is just ground for issuing the attachment. *Morfessis v. Thomas* (D. C. Mun. App. 1952, 91 A. 2d 833).

§ 16-308 [24:128]. Property subject to attachment—Lien.

NOTES TO DECISIONS

TRUST FUNDS

Trust funds coming into possession of Chief Probation Officer of Federal District Court in criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. *Manley v. Butterfield* (1953, 111 F. Supp. 783).

Where defendant was not placed on probation and money which he informally gave to Probation Officer was

not received to make restitution to aggrieved parties for actual damages or loss caused by offenses for which he had been convicted and court who sentenced defendant made no order in respect to restitution, money was subject to garnishment. *Id.*

§ 16-311 [24:131]. Release from attachment—Undertaking—Acceptance by marshal—Marshal's liability—Undertaking approved by court—Judgment after release.

NOTES TO DECISIONS

AMOUNT OF RECOVERY

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *A. B. Davis v. Peerless Inc. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534).

§ 16-312. How levied on credits—Copy of writ—Notice—Interrogatories—Partnership—Retention by garnishee—Liability—Avoidance by advance payment of salary or wages.

* * * * *

(b) It shall be unlawful for any employer to pay salary or earnings to an employee in advance of the time the same shall be due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of such employee, and such advance payment, as to the attaching creditor, shall be void: *Provided*, That after the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when said salary or earnings are due and payable, made within a period of six months after the date of service of said writ or before the earlier satisfaction of such judgment, whichever is the earlier, shall as to such attaching creditor be presumed to be in violation of this subsection and shall cast upon the said employer the burden of proving that such advance payment or payments were not for the purpose of avoiding the attachment of such salary or earnings.

(c) Any attachment issued under section 16-301 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 15-317 shall be subject to the provisions of sections 15-314 to 15-319, except that the employer-garnishee shall pay over the wages withheld pursuant to such sections only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of such sections to any such attachment, the term "judgment debtor" as used in such sections shall be considered to refer to the defendant in the case in which such attachment is issued; and the term "judgment creditor" shall be considered to refer to the plaintiff in such case. (Mar. 3, 1901, 31 Stat. 1262, ch. 854, § 456; Apr. 5, 1939, 53 Stat. 567, ch. 37, § 8(a); Dec. 20, 1944, 58 Stat. 819, ch. 610, § 4; Aug. 4, 1959, 73 Stat. 277, Pub. L. 86-130, § 5.)

AMENDMENTS

1959—Section 5 of the act of August 4, 1959, added subsection (c) to this section and also struck out the word “wages” and inserted in lieu the word “earnings”.

APPLICABILITY OF ACT OF AUG. 4, 1959

See note to section 15-314.

NOTES TO DECISIONS

ADVANCE PAYMENTS

Under sections of District of Columbia Code to effect that advance payment of salary for purpose of avoiding garnishment shall be void as to attaching creditors and that all process against foreign corporations doing business in District may be served by leaving copy at corporation's principal place of business in District, wife, who had obtained decree for separate maintenance and served writ of attachment at Illinois corporation's District of Columbia office, was entitled to judgment of condemnation against corporation for month's salary paid to husband on day of service, notwithstanding fact that husband and corporation in Illinois had entered into contract providing for payment of salary in advance to avoid garnishment and that such contracts are legal in Illinois. *A. C. Welch v. H. S. Welch Jr.* (1958, 166 F. Supp. 539).

PERSONAL SERVICE REQUIRED

Where writ of garnishment was served on garnishee's bookkeeper as agent of garnishee and personal service was not had on garnishee, entire garnishment proceeding was a nullity for want of jurisdiction, and judgment creditor had no right to press any further garnishment proceedings and subpoena directing bookkeeper to appear for oral examination and to bring with him specified employment records was properly quashed. *Hollywood Credit Clothing Co. v. Ben Hundley* (D. C. Mun. App. 1955, 118 A. 2d 515).

The procedures to which a garnishee is subjected under statute can only become operative and enforceable after personal service on garnishee. *Id.*

TIMELY SERVICE OF WRIT

Where employer entered into Illinois contract with employee for payment of employee's salary in advance for purpose of avoiding attachment by wife, who had obtained decree for separate maintenance, subsequently, in July, 1956, a writ of attachment had been served on employer which had answered that it had no funds, employer, in action by wife for judgment of condemnation with respect to salary payment to husband in June 1958, was not entitled to defense that writ of attachment was not served in time. *A. C. Welch v. H. S. Welch Jr.* (1958, 166 F. Supp. 539).

In action by wife for judgment of condemnation against husband's employer based on writ of attachment served on employer on same day that employer paid to husband a month's salary in advance, evidence established that with due diligence, had employer wished to comply with writ of attachment, it could have answered writ for sum in question. *Id.*

§ 16-316 [24:136]. Who may defend—Issue—Trial by jury.

NOTES TO DECISIONS

ATTACHING CREDITORS RIGHT TO HEARING

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith v. Anderson* (D. C. Mun. App. 1954, 107 A. 2d 126).

JUDGMENT OF CONDEMNATION

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors

subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *E. L. Anderson v. W. B. Smith* (D. C. Mun. App. 1958, 137 A. 2d 715).

§ 16-317 [24:137]. Traverse of answers of garnishee—Trial of issue—Costs and counsel fee.

NOTES TO DECISIONS

ATTACHING CREDITORS RIGHT TO HEARING

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith v. Anderson* (D. C. Mun. App. 1954, 107 A. 2d 126).

ATTORNEY'S FEE

Statute providing that in all cases where judgment shall be entered for garnishee, plaintiff shall be adjudged to pay to garnishee, in addition to taxed costs, a reasonable counsel fee, is not limited to services of counsel rendered in trial court but includes services rendered in appellate court, but allowance for such services should be made by trial court. *Lincoln Loan Service v. Motor Credit Co.* (D. C. Mun. App. 1951, 83 A. 2d 332).

JUDGMENT OF CONDEMNATION

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *E. L. Anderson v. W. B. Smith* (D. C. Mun. App. 1958, 137 A. 2d 715).

PREVIOUS DECISIONS, EFFECT OF

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. *Troshinsky v. Feldman* (D. C. Mun. App. 1951, 81 A. 2d 91).

§ 16-318 [24:138]. Claimant to attached property may petition—Right to trial—Issue—Jury trial.

NOTES TO DECISIONS

AGENCY

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, it was within province of trial judge to find that tenant was not the agent of the agent of the mortgagee in having furniture and furnishings sold. *Thurm v. Wall* (D. C. Mun. App. 1954, 104 A. 2d 835).

ORAL AGREEMENTS

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment

because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm v. Wall* (D. C. Mun. App. 1954, 104 A. 2d 835).

§ 16-319. No judgment against garnishee until action against defendant is determined—Release of garnishee.

NOTES TO DECISIONS

AMENDMENT OF GARNISHMENT

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

APPLICATION FOR JUDGMENT AGAINST GARNISHEE

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

EVIDENCE OF INDEBTEDNESS

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc. v. Arco Contractors, Inc.* (D. C. Mun. App. 1957, 134 A. 2d 322).

GARNISHEE IS SUIT IN PERSONAM

In garnishment proceeding, it is person of garnishee, not res, which confers jurisdiction, and when garnishment is served, suit becomes suit in personam against garnishee, and in absence of such personal jurisdiction, a judgment against garnishee is a nullity. *Hollywood Credit Clothing Co. v. Ben Hundley* (D. C. Mun. App. 1955, 118 A. 2d 515).

PRIOR DETERMINATION AGAINST DEBTOR

Judgment should not be entered against garnishee until action against principal debtor is determined. *Marvins Credit, Inc. v. General Motors Corp.* (D. C. Mun. App. 1956, 119 A. 2d 447).

§ 16-323 [24:143]. Judgment against garnishee for credits admitted or found, less reasonable attorney's fee and costs—Judgment for whole amount if garnishee defaults.

NOTES TO DECISIONS

ATTACHING CREDITORS RIGHT TO HEARING

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith v. Anderson* (D. C. Mun. App. 1954, 107 A. 2d 126).

ATTORNEY'S FEE

In garnishment proceedings, where trial court had question whether an attorney's fee should be allowed garnishee before it, in a motion to amend its judgment to provide therefor, but before reaching a decision thereon an appeal was noted, after mandate is received by the trial

court, counsel for appellant may renew his request for such fee under the statute. *E. L. Anderson v. W. B. Smith* (D. C. Mun. App. 1958, 137 A. 2d 715).

§ 16-331 [24:151]. Trial of issues.

NOTES TO DECISIONS

TRIAL OF MAIN ISSUE

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis v. Thomas* (D. C. Mun. App. 1952, 91 A. 2d 883).

Chapter 4.—DIVORCE AND SEPARATION

§ 16-401 [14:61]. Bona fide residence required—Terms.

NOTES TO DECISIONS

ABANDONMENT OF ABODE

Where wife abandons her abode in District of Columbia and establishes a new abode in Virginia, if at any time during her stay in Virginia she forms the intention of remaining there indefinitely, she acquires a domicile in Virginia and is no longer a resident of District of Columbia for purposes of filing divorce complaint, notwithstanding that she may have a floating intention to return to the District at some future time. *E. A. Adams v. J. M. Adams, Jr.* (D. C. Mun. App. 1957, 136 A. 2d 866).

"APPLICATION" DEFINED

Residential requirement of District of Columbia statute providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion." *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

BONA FIDE RESIDENT

Even though a marriage is void ab initio without being so decreed for reason that husband had a previous undissolved marriage, where a judicial decree of nullity is sought in District of Columbia, the petitioning party is required to establish that she has been a bona fide resident of District for at least one year preceding the petition for annulment. *M. Koonin next friend of C. L. D. Hornsby v. H. H. Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

CONSTRUCTION

The provision of District of Columbia Code that no divorce shall be granted to anyone who has not been a bona fide resident of District for at least one year before application therefor did not require Federal District Court to refuse to entertain wife's amended cross-complaint, charging husband's commission of adultery with one named therein as co-respondent and cross-defendant, in husband's divorce suit, even if cross-complainant lost her District domicile by moving to Maryland before filing amended cross-complaint. *Daniels v. Souders* (1952, 90 U. S. App. D. C. 298, 195 F. 2d 780).

CROSS-COMPLAINT

Where cases adopting view, in other jurisdictions than District of Columbia that divorce may be granted nonresident of state of forum on cross-petition in divorce action

by resident thereof, though statute requires plaintiff in divorce action to be resident of such state for designated time, clearly indicate that plainest principles of equity furnished impulse for such view, it will be adopted by Court of Appeals for District of Columbia in construing District Code prohibiting divorce decree in favor of one who has not been bona fide resident of District for at least one year before application therefor. *Daniels v. Souders* (1952, 90 U. S. App. D. C. 298, 195 F. 2d 780).

DOMICILE

In divorce action instituted by wife of North Carolina serviceman one year after she and her husband began living in Washington, D. C., but only a month and a half after date of their separation, evidence sustained finding that there was no intent on part of husband to abandon his former domicile and establish one in Washington, and therefore court did not have jurisdiction of suit. *Stephenson v. Stephenson* (D. C. Mun. App. 1957, 134 A. 2d 105).

JURISDICTION

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

In wife's divorce suit, it was proper for trial court at conclusion of wife's case to make finding of fact as to whether wife was bona fide resident of District of Columbia for one year preceding filing of her complaint, as required by statute. *E. A. Adams v. J. M. Adams, Jr.* (D. C. Mun. App. 1957, 136 A. 2d 866).

In divorce suit by wife who lived in District of Columbia at time of her marriage and for a year thereafter when she moved to Arlington, Virginia, where she lived for nearly two years prior to bringing suit against husband who was in armed services and who had remained in District only a few days after the marriage, evidence sustained trial court's finding of fact that wife was not bona fide resident of District for one year preceding filing of her complaint as required by statute. *Id.*

The federal District Court for District of Columbia had jurisdiction of husband's action for divorce on ground of adultery committed by wife outside District, though plaintiff did not allege his residence therein for two years, where wife's acts of adultery were alleged to have been committed within period of over a year for which complaint alleged that plaintiff was a resident of District. *Orlans v. Orlans et al.* (1956, 99 U.S. App. D.C. 170, 238 F. 2d 31).

Statute providing that no divorce shall be granted to person who has not been bona fide resident of District of Columbia for at least two years for any cause occurring out of District and prior to plaintiff's residence therein, does not require two years residence where cause for divorce occurs outside District during period in which plaintiff is bona fide resident of District. *Id.*

PERMANENCY OF RESIDENCE

In action by husband for divorce on ground of wife's desertion in Virginia where husband had formerly lived with wife, testimony of husband, who had moved to District of Columbia more than two years prior to commencement of action, that husband did not intend to make his home permanently in District because his employer was transferring him back to Virginia in near future did not, by itself, deprive trial court of jurisdiction and trial court erred in dismissing complaint for lack of jurisdiction. *Jones v. Jones* (D. C. Mun. App. 1957, 136 A. 2d 580).

"RESIDENCE," DEFINED

Under statute providing that a party who seeks a decree of nullity of marriage must be a bona fide resident of the District of Columbia for at least one year preceding the application, the term "residence" means domicile. *M. Koonin, next friend of C. L. D. Hornsby v. H. H. Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

"RESIDENCE" MEANS DOMICILE

For purposes of statute providing that no divorce shall be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause which shall have occurred out of District and prior to residence therein, the term "residence" means domicile. *Jones v. Jones* (D. C. Mun. App. 1957, 136 A. 2d 580).

In statute requiring spouse suing for divorce to have had a bona fide residence in District of Columbia for one year preceding filing of complaint, the word "residence" means domicile. *E. A. Adams v. J. M. Adams, Jr.* (D. C. Mun. App. 1957, 136 A. 2d 866).

STATUS OF DIVORCE FROM BED AND BOARD

A judgment of divorce from bed and board in the District of Columbia leaves the parties in the continuing status of husband and wife, with inherent possibility under statute that a further motion for absolute divorce will be made, and the action therefore remains open for further action as though it were an equity injunction. *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

§ 16-403 [14:63]. Causes for divorce a vinculo and for divorce a mensa et thoro and for annulling marriages.

NOTES TO DECISIONS

AMENDMENT OF COMPLAINT

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone v. Slone* (D. C. Mun. App. 1957, 134 A. 2d 585).

"APPLICATION" DEFINED

Residential requirement of District of Columbia statute providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion". *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

CAPACITY

In action by husband for annulment of marriage on ground that his wife was incapable of entering into married state due to psychogenic causes, evidence was insufficient to sustain finding that failure to consummate marriage was due to stubborn disposition on part of wife to deny husband matrimonial intercourse. *Z. E. Jwaideh v. P. J. Jwaideh* (D. C. Mun. App. 1958, 140 A. 2d 303).

CONSENT

Consent necessary to bar a divorce for desertion must be found in some affirmative conduct by complainant amounting to a participation in the conduct of the opposite spouse; silent acquiescence or mere acceptance of fixed determination to leave or failure to object to departure or to exert physical force or other importunity to prevent departure do not constitute "consent". *Betty L. Marcey v. Melvin L. Marcey* (D. C. Mun. App. 1957, 130 A. 2d 918).

In wife's action for divorce on ground of husband's desertion for more than two years, evidence warranted finding that wife did not consent to husband leaving home of parties even though she did not make an affirmative protest. *Id.*

CONSTRUCTIVE DESERTION

Wife, who did not prove that conduct of husband amounted to cruelty which would warrant a limited divorce on that ground, was not entitled to absolute divorce on ground that by reason of husband's conduct she was forced to leave him and that husband therefore was guilty of constructive desertion. *S. A. Schreiber v. D. L. Schreiber* (D. C. Mun. App. 1958, 139 A. 2d 278).

CORROBORATION

Corroboration of testimony is not required in divorce action. *Johnson v. Johnson* (D. C. Mun. App. 1957, 134 A. 2d 109).

Corroboration of husband's testimony that wife deserted him was not necessary as a matter of law in action by husband for divorce on ground of desertion. *Stevens, Jr. v. Stevens* (D. C. Mun. App. 1957, 134 A. 2d 111).

In uncontested divorce action by husband on ground of five years voluntary separation from wife, corroboration of husband's testimony that he and his wife had not cohabited for five years was unnecessary. *Weber v. Weber* (D. C. Mun. App. 1957, 134 A. 2d 323).

Where husband sued wife for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation and husband's testimony supported allegations of the complaint, trial court's dismissal of complaint on ground that such testimony was without corroboration constituted reversible error. *Henderson v. Henderson* (D. C. Mun. App. 1957, 134 A. 2d 581).

In husband's suit for divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, ruling requiring corroboration of plaintiff's testimony was erroneous. *Moore v. Moore* (D. C. Mun. App. 1957, 135 A. 2d 643).

In an uncontested action for absolute divorce alleging desertion, where plaintiff's evidence tended to prove constructive desertion, corroboration of plaintiff's testimony was not required. *Brett v. Brett* (D. C. Mun. App. 1957, 133 A. 2d 927).

CRUELTY

Cruelty within divorce statute must depend largely on circumstances of each case. *S. A. Schreiber v. D. L. Schreiber* (D. C. Mun. App. 1958, 139 A. 2d 278).

DECISIONS OF DISTRICT COURT

The Court of Appeals for the District of Columbia would accord great weight to findings of District Court in a divorce action. *Cocci v. Cocci* (1950, 88 U. S. App. D. C. 43, 185 F. 2d 898).

DESERTION

Under District of Columbia Statute allowing innocent party an absolute divorce in case of desertion for two years, word "desertion" contemplates a voluntary separation without justification or an intention to return, and without consent or connivance on part of other party; the separation and intent must concur to meet requirements of desertion. *Betty L. Marcey v. Melvin L. Marcey* (D. C. Mun. App. 1957, 130 A. 2d 918).

Where trial court which granted husband divorce on ground of desertion made no specific finding of fact as to whether it had been purpose and intent of husband, in entering into separation agreement, to consent or acquiesce in separation, case would be remanded for proper consideration of issue. *Lort v. Lort* (1952, 91 U. S. App. D. C. 118, 198 F. 2d 598).

EVIDENCE

In action by wife for a limited divorce on grounds of cruelty and for maintenance for support of herself and five minor children of the marriage, evidence supported judgment denying divorce but granting wife separate maintenance and custody. *Divers v. Divers* (D. C. Mun. App. 1957, 134 A. 2d 332).

In action for divorce by wife who alleged that by reason of her husband's conduct which amounted to cruelty she was forced to leave him and that he therefore was guilty of constructive desertion, evidence sustained finding that wife's health was not affected by husband's conduct. *S. A. Schreiber v. D. L. Schreiber* (D. C. Mun. App. 1958, 139 A. 2d 278).

EVIDENCE OF GOOD FAITH

In husband's divorce action on ground of five years' voluntary separation, evidence whether wife's attempts to effect a reconciliation during five year period relied on had been in good faith did not support finding that separation had been voluntary. *Gladys S. Roberts v. James E. Roberts* (1955, 95 U. S. App. D. C. 382, 222 F. 2d 408).

FINAL CONVICTION

Where husband was convicted on plea of guilty to charge of obtaining money by false pretenses with intent to defraud and was sentenced to imprisonment for maximum of three years, and he began serving sentence and did not appeal, and seven months after conviction, wife brought suit for absolute divorce under statute authorizing divorce in case of final conviction of a felony involving moral turpitude, and a week after husband was served in divorce action he filed in criminal case a motion for new trial, it could not be said as a matter of law that husband, by lodging motion for new trial in criminal case, destroyed right of wife to divorce. *Katz v. Katz* (D. C. Mun. App. 1957, 136 A. 2d 261).

HUSBAND'S CHOICE OF DOMICILE

Generally, a husband has the right to choose the place where the family will live; and if the husband acts reasonably, the unjustified failure or refusal of wife to follow him is desertion, which, if it persists for statutory period of two years, is grounds for divorce. *Snyder v. Snyder* (D. C. Mun. App. 1957, 134 A. 2d 587).

INSANITY

The statute authorizing divorce for voluntary separation for five consecutive years requires that continued separation depend upon the continued intention, so that a period of insanity suffered by the wife must be excluded in computing the statutory period. *Dorsey v. Dorsey* (1952, 90 U. S. App. D. C. 284, 195 F. 2d 567).

JURISDICTION

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

LACHES

Generally suits to annul marriages on ground of incapacity must be brought within a reasonable time after discovery of defect, and if action is not instituted promptly it will be barred by laches. *Z. E. Jwaideh v. P. J. Jwaideh* (D. C. Mun. App. 1958, 140 A. 2d 303).

Where husband discovered wife's incapacity to enter into married state due to psychogenic causes within a year following marriage, but after initial treatment parties did nothing more to correct the trouble until some six years later, husband's action for annulment of marriage was barred by laches. *Id.*

PERIOD OF DESERTION

A limited divorce may not be granted on ground of desertion for period of less than two years. *Gerald L. Scott v. Nancy Lee Scott* (D. C. Mun. App. 1958, 140 A. 2d 312).

PRESUMPTIONS

That wife, in good faith continually attempted to bring about reconciliation from beginning of separation until 18 months later gave rise to a presumption, applicable in husband's action for divorce on grounds of five years' voluntary separation, that wife's continued efforts during five year period relied on had also been in good faith. *Gladys S. Roberts v. James E. Roberts* (1955, 95 U. S. App. D. C. 382, 222 F. 2d 408).

PRIMA FACIE CASE

In action by husband for divorce on ground of desertion on theory that wife refused to accompany him to new residence, even though action was uncontested, because testimony raised an inference of possible justification of

wife's conduct, husband had burden of making out at least a prima facie case and explaining away any apparent justification for wife's conduct. *Snyder v. Snyder* (D. C. Mun. App. 1957, 134 A. 2d 587).

PRIOR DECREE

Where wife, on November 2, 1953, obtained a limited divorce, on ground of husband's desertion, which court found began June 2, 1948, and continued more than two years, and on January 29, 1954, husband brought action for divorce on ground of voluntary separation for five consecutive years, husband's action was barred by the 1953 decree, since desertion and voluntary separation cannot exist at the same time, and there was therefore not a voluntary separation of five years when husband brought action. *Pratt v. Pratt* (1957, 99 U. S. App. D. C. 401, 240 F. 2d 639).

PURPOSE OF CHAPTER

The purpose of statute making voluntary separation from bed and board for five consecutive years ground for divorce is to permit termination in law of marriages which have ceased to exist in fact. *Hawkins v. Hawkins* (1951, 89 U.S. App. D.C. 147, 191 F. 2d 344).

QUESTION OF FACT

In divorce proceeding, question whether as result of conduct of husband wife suffered requisite impairment of health to justify granting of divorce on ground of cruelty was question of fact. *S. A. Schreiber v. D. L. Schreiber* (D. C. Mun. App. 1958, 139 A. 2d 278).

SEPARATION AGREEMENT

Generally, an unrevoked separation agreement, in absence of other circumstances, bars a divorce on ground of desertion, but where other circumstances appear, agreement becomes one of factors to be considered and question must be determined upon the merits, important considerations being whether separation of parties was consented to or acquiesced in by innocent party who except for such consent or acquiescence would have been privileged to secure divorce on ground of desertion. *Lort v. Lort* (1952, 91 U.S. App. D.C. 118, 198 F. 2d 598).

"SEPARATION FROM BED AND BOARD"

Husband and wife who, though they sometimes eat at the same table, never eat together with any decent degree of sociability are "separated from board" within meaning of statute making separation from bed and board for five consecutive years ground for divorce. *Hawkins v. Hawkins* (1951, 89 U. S. App. D. C. 147, 191 F. 2d 344).

Sharing a "board" within meaning of statute making separation from bed and board for five consecutive years ground for divorce connotes eating together with some decent degree of sociability. *Hawkins v. Hawkins* (1951, 89 U. S. App. D. C. 147, 191 F. 2d 344).

STATUS OF DIVORCE FROM BED AND BOARD

A judgment of divorce from bed and board in the District of Columbia leaves the parties in the continuing status of husband and wife, with inherent possibility under statute that a further motion for absolute divorce will be made, and the action therefore remains open for further action as though it were an equity injunction. *A. G. Bottomley v. B. L. Bottomley* (1958, 104 U.S. App. D.C. 311, 262 F. 2d 23).

VOIDABLE MARRIAGES

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse

of discretion. *D. R. Duley, etc. v. E. L. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

VOLUNTARY SEPARATION

In action by husband for divorce on ground of five years' voluntary separation, evidence sustained finding that separation had not been voluntary on part of wife after original separation. *L. A. Scott v. M. L. Scott* (D.C. Mun. App. 1959, 147 A. 2d 449).

Where separation of husband and wife was voluntary originally, and shortly thereafter wife was committed to mental institution as being insane, time spent by wife in mental institution could not be counted as time spouses were voluntarily separated so as to entitle husband to an absolute divorce on ground that spouses had been voluntarily separated for five years. *Dorsey v. Dorsey* (1950, 94 F. Supp. 917, affirmed 90 U. S. App. D. C. 284, 195 F. 2d 567).

Evidence that husband and wife, while continuing to live in the same house, had for twenty years occupied separate bedrooms, had no marital relations or social life together and, though they sometimes ate together, did not speak to each other, established voluntary "separation from bed and board" as ground for absolute divorce. *Hawkins v. Hawkins* (1951, 89 U. S. App. D. C. 147, 191 F. 2d 344).

Where husband and wife for twenty years occupied separate bedrooms, had no marital relations or social life together and did not speak to each other, in absence of anything to suggest that they did not intend to do what they did and regardless of whether they knew the legal effect of their conduct, their separation was "voluntary" within meaning of statute making voluntary separation from bed and board for five consecutive years ground for divorce. *Id.*

The statute authorizing divorce for voluntary separation for five consecutive years requires a physical separation plus a mental disposition which gives a voluntary character to the separation, and the initial character of separation is not determinative of voluntariness of separation. *Dorsey v. Dorsey* (1950, 94 F. Supp. 917, affirmed 90 U. S. App. D. C. 284, 195 F. 2d 567).

In divorce action, whether conversations which wife stated she had with her husband did occur, and whether they constituted substantial efforts on her part, made in good faith to effect a reconciliation, as bearing on whether 5 years separation of husband and wife was voluntary within statute, were questions of fact. *Farish v. Farish* (1950, 87 U. S. App. D. C. 329, 185 F. 2d 425).

In divorce action evidence was insufficient to establish that wife had during the statutory five year period made any effort to get in touch with her husband so as to effect a reconciliation, and therefore separation of parties must be deemed to have been voluntary within meaning of divorce statute. *Cocci v. Cocci* (1950, 88 U. S. App. D. C. 43, 185 F. 2d 898).

Where separation of wife and husband was voluntary originally, and shortly thereafter wife was committed to mental institution as insane, time spent by wife in the institution could not be counted as time spouses were voluntarily separated so as to entitle husband to an absolute divorce on ground that spouses were voluntarily separated for five years notwithstanding that wife in visits to her home manifested no change of attitude regarding the separation. *Dorsey v. Dorsey* (1952, 90 U. S. App. D. C. 284, 195 F. 2d 567).

In action for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, evidence sustained finding that the parties had not been voluntarily separated from bed and board without cohabitation for the five years next preceding the filing of the complaint. *Edward D. Talbert v. Hazel P. Talbert* (1955, 96 U. S. App. D. C. 55, 223 F. 2d 347).

To establish ground for divorce under five years' voluntary separation statute, plaintiff must prove that spouse had affirmatively agreed to separation through its duration, that spouse had silently acquiesced during period relied upon, or that spouse did not actually in good faith manifest a desire to continue marriage relation, thus

justifying a conclusion of acquiescence. *Gladys S. Roberts v. James E. Roberts* (1955, 95 U. S. App. D. C. 382, 222 F. 2d 408).

Marriages which, because of long separation, have ceased in fact to exist, may, for that reason, be legally ended only where separation has been continuously voluntary on part of both parties for statutory period. *Id.*

§ 16-409 [14:69a]. Decree of annulment or divorce a vinculo dissolves property rights—Jurisdiction of court to determine property rights.

NOTES TO DECISIONS

ANTENUPTIAL AGREEMENTS

Under statute permitting husband and wife to retain incidents of tenancy by entirety by valid antenuptial or postnuptial agreement "in relation" thereto, property settlement agreement must be made "in relation" to property rights of parties rather than "in relation" to the divorce and consequently any agreement which preserves those property rights of parties is sufficient. *Heath v. Heath* (1951, 89 U. S. App. D. C. 68, 189 F. 2d 697).

AUTHORITY TO PARTITION REAL PROPERTY

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entirety. *Erma Hogan v. John R. Hogan* (1957, 102 U. S. App. D. C. 87, 250 F. 2d 412).

PROCEDURE

The statute providing that divorce court in same proceeding should have power to award or apportion property owned jointly is concerned solely with matters of procedure and not with substantive powers of court. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

PROPERTY RIGHTS

District Court for District of Columbia had power to determine property rights of divorced parties after entry of foreign divorce. *Ruth A. Curles v. William L. Curles et al.* (1955, 136 F. Supp. 916).

Where property was conveyed to husband and wife as joint tenants and they entered into separation agreement providing that real estate jointly owned by parties should thereafter remain as joint property of parties in joint tenancy, conveyance using words creating joint tenancy actually gave husband and wife tenancy by entirety and incidents of tenancy by entirety would be retained after dissolution of marriage by reason of separation agreement, notwithstanding fact that separation agreement referred to estate as property held in joint tenancy. *Heath v. Heath* (1951, 89 U. S. App. D. C. 68, 189 F. 2d 697).

The District of Columbia Code section permitting a husband and wife to retain the incidents of a tenancy by the entirety after their marriage is dissolved if they so agreed but terminating such estate in the absence of agreement and authorizing court to award or apportion property involved applies to property settlement agreement when foreign divorce has been obtained. *Id.*

The statute providing that, upon entry of divorce decree, property rights of parties in joint tenancy or tenancy by the entirety shall stand dissolved and court shall have power to award or apportion property does not empower court to award wife an interest in property owned by husband alone. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

Where wife has interest in husband's property, court in divorce proceeding may adjudicate property rights and award wife the property which belongs to her. *Id.*

Where realty owned by husband and wife as tenants by the entirety was not referred to in final divorce decree, and wife died before decree could become effective to terminate marriage by expiration of six months, the proceedings in divorce action abated by death of plaintiff, and divorce court would not determine whether husband was entitled to property as sole surviving tenant by entirety or whether on entry of decree the husband and wife became owners as tenants in common with interest of wife passing to her heirs at law on her death. *Brown v. Brown* (1950, 97 F. Supp. 237).

REVIEW

Where trial court could not properly have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

TENANCY BY THE ENTIRETY

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated under statutes of District of Columbia, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley v. Brown* (1952, 90 U. S. App. D. C. 351, 196 F. 2d 859).

§ 16-410 [14:70]. Alimony pendente lite—Suit money—Counsel fees—Enforcement—Enjoining disposition and sequestration of property—Custody of children.

NOTES TO DECISIONS

BASIS FOR COMMITMENT

When validity of commitment for contempt for non-payment of money judgment is questioned, court will look behind commitment order to money judgment itself and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process is not applicable.

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

CONTEMPT

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

DISCRETION OF COURT

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperform-

ance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

IMPRISONMENT

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

LACHES

Where 1936 District of Columbia divorce decree required husband to pay \$75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

PUNISHMENT FOR CONTEMPT

The statutory authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not release the delinquent from civil liability to pay the amounts which have become due. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

STATUTORY POLICY

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

SUBSEQUENT OBLIGATIONS

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

WRIT OF EXECUTION

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to nonpayment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

§ 16-411 [14:71]. Permanent alimony—Retention of dower.

NOTES TO DECISIONS

AMOUNT

An allowance to wife of permanent alimony sufficient for her support and that of the minor children whom the court may assign to her care is alimony payable to the wife and is not contingent on minority of the children. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

ARREARAGES

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband

until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman v. Berman* (1953, 92 U. S. App. D. C. 77, 202 F. 2d 812).

CONTEMPT

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

DISCRETION OF COURT

Both award of alimony and amount to be awarded are matters placed in trial court's discretion, and exercise of such discretion will not be disturbed on appeal except for clear abuse. *C. Shelton v. F. Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

Where, at time of divorce action, 47-year-old wife, who had been a school teacher elsewhere, but who was unable to qualify for such position in the District of Columbia, was unemployed and was being supported by her brother, while her 40-year-old husband was earning \$4,640 a year, award of \$25 per week as alimony to wife did not constitute a manifest abuse of trial court's discretion. *Id.*

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperformance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

LACHES

In divorce action, evidence, which revealed that wife had waited four years after she had been deserted by husband before asserting her claim for alimony and that wife could have sued for separate maintenance immediately following the desertion but could not sue for divorce until desertion had continued for two years, was sufficient to sustain trial court's finding that wife was not guilty of laches which would bar her claim for alimony. *C. Shelton v. F. Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

Where 1936 District of Columbia divorce decree required husband to pay \$75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

PROPERTY RIGHTS

In absence of some right or element of ownership, legal or equitable, on part of wife in husband's property, court in divorce case is without power to order transfer of that property to her, and no such power is included in an

authorization to grant alimony. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

The statute authorizing court in divorce case to grant permanent alimony to wife and to retain to wife her right of dower in husband's estate does not empower court to award real property of one spouse to the other. *Id.*

PUNISHMENT FOR CONTEMPT

The statutory authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not release the delinquent from civil liability to pay the amounts which have become due. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

REVIEW

Where trial court could not have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

STATUTORY POLICY

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler v. Wheeler* (1951, 88 U. S. App. D. C. 193, 188 F. 2d 31).

SUBSEQUENT OBLIGATIONS

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

WRIT OF EXECUTION

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to non-payment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 611, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

§ 16-413 [14: 73]. Jurisdiction retained as to alimony and custody of children.

NOTES TO DECISIONS

INCREASE OF ALIMONY

Where agreement of parties incorporated in divorce decree provided for division of property and for monthly payments to wife "as maintenance for her support", although both provisions were included in same instrument, they were separable so that if parties intended monthly payments to be an alimony award, provision concerning monthly payments would be subject to modification. *Rogers v. Rogers* (1953, 92 U. S. App. D. C. 97, 203 F. 2d 61, reversing 109 F. Supp. 937).

MODIFICATION OR REMISSION OF INSTALLMENT

Under statute, the United States District Court for the District of Columbia cannot modify or remit installments of alimony which have become due. *Kephart v. Kephart* (1951, 89 U. S. App. D. C. 373, 193 F. 2d 677, certiorari denied 342 U. S. 944, 72 S. Ct. 557).

PROPERTY RIGHTS

Where husband and wife's agreement incorporated in divorce decree settles only property rights, its inclusion in judgment does not confer jurisdiction to modify it. *Rogers v. Rogers* (1953, 92 U. S. App. D. C. 97, 203 F. 2d 61).

RETENTION OF JURISDICTION

Where divorce decree incorporated agreement of husband and wife which contained provisions for division of property and monthly payments to wife "as maintenance for her support" to cease on her remarriage and court retained jurisdiction to enforce compliance with agreement and all matters pertaining thereto, but parties' intent as to whether monthly payments were alimony was not apparent from agreement, order denying, for lack of jurisdiction, motion for increase in alimony would be reversed and case would be remanded for evidence of intention. *Rogers v. Rogers* (1953, 92 U. S. App. D. C. 97, 203 F. 2d 61, reversing 109 F. Supp. 937).

§ 16-415 [14: 75]. Maintenance of wife and minor children—Enforcement.

NOTES TO DECISIONS

BASIS FOR COMMITMENT

When validity of commitment for contempt for non-payment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable.

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

CONTEMPT

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen v. Queen* (1951, 88 U. S. App. D. C. 157, 188 F. 2d 624).

COUNSEL FEES

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman v. Berman* (1953, 92 U. S. App. D. C. 77, 202 F. 2d 812).

EFFECT OF DIVORCE

Where husband filed suit for divorce against wife in the District of Columbia, and wife filed a counterclaim for separate maintenance, and husband then moved to Texas and procured a divorce in Texas, court in District of Columbia properly dismissed counterclaim for separate maintenance, since there could be no award of maintenance after divorce decree became effective. *Meredith v. Meredith* (1953, 96 U. S. App. D. C. 351, 204 F. 2d 64).

EFFECT OF POST-DIVORCE AGREEMENT

Post-divorce agreement providing that in consideration for payment of \$5,000, husband would be discharged

from all claims arising out of and during marital relationship with exception of obligation to support children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, failed to extinguish rights of children to continued support and District Court had jurisdiction to determine whether support provided for children was adequate even though husband had presented a substantial showing that he had been affording children full measure of support. *Harrison et al. v. Harrison* (1957, 101 U. S. App. D. C. 309, 248 F. 2d 631).

Where parties had entered into post-divorce agreement providing that in consideration for payment of \$5,000, husband would be discharged from all claims arising out of and during marital relationship with exception of obligation to support children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, wife had released all claims to separate maintenance for herself. *Id.*

EQUITY JURISDICTION

Equity will compel a husband to support his wife, quite apart from apparent restrictions on such obligation in statute. *Kathryn W. Meredith v. Richard H. Meredith* (1955, 96 U. S. App. D. C. 355, 226 F. 2d 257).

United States District Court for the District of Columbia has general equity powers, which are not supplanted by statute providing that whenever any husband shall fail to maintain his wife, court, on application of wife, may order him to pay as maintenance such sums as would be allowed in case of divorce, and which are broad enough in appropriate circumstances to support a grant of maintenance after an ex parte divorce. *Tasanilla Hopson v. Delores Palmer Hopson* (1955, 95 U. S. App. D. C. 285, 221 F. 2d 839).

Statute providing that whenever any husband shall fail to maintain his wife, court, on application of wife, may order him to pay as maintenance such sums as would be allowed in case of divorce, is merely a specific authorization to enter a maintenance decree and is not a limitation on court's general equitable powers to enter such a decree. *Id.*

EVIDENCE

In wife's suit for maintenance, defended on ground that she had been guilty of adultery and had, accordingly, forfeited her right to support, evidence supported decree granting permanent maintenance. *Robert J. Smith v. Dorothy Marie Smith* (D. C. Mun. App. 1957, 137 A. 2d 221).

FOREIGN DECREE

A Texas court's decree, granting husband a divorce after dismissal of his complaint for divorce by federal District Court for District of Columbia on his motion because of his removal to Texas, did not destroy wife's personal financial right to claim maintenance, for which she filed counterclaim in District of Columbia court before filing of husband's Texas divorce suit, where wife did not appear in such suit, as Texas court had no jurisdiction over her. *Kathryn W. Meredith v. Richard H. Meredith* (1955, 96 U. S. App. D. C. 355, 226 F. 2d 257).

Ex parte foreign divorce procured by husband did not operate as a bar, under the full faith and credit clause of the federal Constitution, to subsequent suit by wife in the District of Columbia for support and maintenance for herself and child. *Tasanilla Hopson v. Delores Palmer Hopson* (1955, 95 U. S. App. D. C. 285, 221 F. 2d 839).

A grant of maintenance in a suit filed after an ex parte foreign divorce is consistent with the full faith and credit clause of the federal Constitution. *Id.*

IMPRISONMENT

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *T. F. Lundergan v. G. J. Lundergan* (1958, 102 U. S. App. D. C. 259, 252 F. 2d 823).

MAINTENANCE

Where wife was denied a divorce because of insufficiency of her proof of cruelty, but was awarded "alimony", the

"alimony" was in fact an award of "maintenance", which was within the power of the court, upon a proper showing, even though there was no ground for divorce. *Brooker v. Brooker* (1954, 94 U. S. App. D. C. 38, 211 F. 2d 648).

§ 16-416 [14:76]. Petition for divorce—Proceedings.

All applications for divorce or for a decree annulling a marriage shall be made by complaint to the Domestic Relations Branch of the Municipal Court for the District of Columbia, and the proceedings thereupon shall be the same as in equity causes, except so far as otherwise herein provided. (Mar. 3, 1901, 31 Stat. 1345, ch. 854, § 963; June 30, 1902, 32 Stat. 537, ch. 1329; June 21, 1949, 63 Stat. 215, ch. 233; Apr. 11, 1956, 70 Stat. 112, ch. 204, § 107 (a).)

COMPILER'S NOTE

The 1902 amendment added a paragraph which provided for disposal of divorce actions pending December 31, 1901. This paragraph has been omitted herefrom.

AMENDMENTS

The act of June 21, 1949, cited to text, substituted the word "complaint" in lieu of "petition" and the words "United States District Court" in lieu of "District Court of the United States".

1956—Section 107 (a) of the act of April 11, 1956, Public Law 486, ch. 204, 70 Stat. 112, struck out "United States District Court for the District of Columbia" and inserted in lieu thereof "Domestic Relations Branch of the Municipal Court for the District of Columbia."

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see sections 11-758 to 11-770.

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, makes all sections (except sections 105, 106 and 107, classified to sections 11-762, 11-763, 16-210, 16-220 16-416 and 32-786) effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) (§ 11-752).

§ 16-418 [14:78]. Court to assign attorney in uncontested cases—Compensation.

NOTES TO DECISIONS

SUMMARY JUDGMENT

Divorce should not be granted by judgment on the pleadings or by summary judgment. *Rea v. Rea* (1954, 124 F. Supp. 922).

Public is third party in every divorce case and has interest in preservation of the marriage bond, and, therefore, divorce should not be granted until after the court hears evidence. *Id.*

Even if issue, on which moving party relied as basis for its application for summary judgment in divorce proceeding on ground that such issue was res judicata due to prior litigation between the parties, had been established by court's finding in prior action, summary judgment for divorce would not be granted, but taking of evidence would be required. *Id.*

§ 16-419 [14:79]. Proof required—Decree on default.

NOTES TO DECISIONS

ADMISSIONS

In husband's action for annulment of marriage to wife who was in armed forces at time of marriage and who refused to join husband after she obtained discharge from service, admissions of wife made in letters and telephone calls to husband that she did not intend to join husband were properly received in evidence. *J. Farrington v. C. W. Farrington* (D. C. Mun. App. 1958, 140 A. 2d 921).

CORROBORATION

Rule requiring corroboration of plaintiff's testimony in divorce cases was a rule of ecclesiastical courts and disappeared in common-law courts; and, in absence of statutory requirement for corroboration, divorce can be granted on uncorroborated testimony of complainant in uncontested divorce action. *Schroeder v. Schroeder* (D. C. Mun. App. 1957, 133 A. 2d 470).

MATERIAL PREJUDICE

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

PENALTY FOR FAILURE TO GIVE DEPOSITION

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

STRIKING OF PLEADING IN DIVORCE ACTION

Rule that pleadings may be stricken if person willfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but code specifically forbids the grant of divorce on default. *Fred C. Hipp v. Pattie Y. Hipp* (D. C. Mun. App. 1957, 134 A. 2d 493).

SUMMARY JUDGMENT

Divorce should not be granted by judgment on the pleadings or by summary judgment. *Rea v. Rea* (1954, 124 F. Supp. 922).

Public is third party in every divorce case and has interest in preservation of the marriage bond, and, therefore, divorce should not be granted until after the court hears evidence. *Id.*

Even if issue, on which moving party relied as basis for its application for summary judgment in divorce proceeding on ground that such issue was res judicata due to prior litigation between the parties, had been established by court's finding in prior action, summary judgment for divorce would not be granted, but taking of evidence would be required. *Id.*

§ 16-421 [14: 81]. When decree for annulment or absolute divorce effective.

NOTES TO DECISIONS

DEFENSE IN COLLATERAL PROCEEDING

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such district, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1950, 87 U. S. App. D. C. 334, 185 F. 2d 429).

DEATH

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated under statutes of District of Columbia, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley v. Brown* (1952, 90 U. S. App. D. C. 351, 196 F. 2d 859).

§ 16-422. Suit to determine validity of marriage.

NOTES TO DECISIONS

FINDING BY COURT IN ADVISORY ACTION

Where trial court properly disclaimed jurisdiction of action by alleged wife against alleged husband for declaration as to marital status, as only an advisory opinion was sought, it was error for trial court to find as fact that marriage was invalid. *Mary L. Gardner v. Frank H. Gardner* (1956, 98 U. S. App. D. C. 144, 233 F. 2d 23).

WHEN ACTION MAY BE MAINTAINED

Under District of Columbia statute providing that where validity of alleged marriage is denied by either party, other party may institute suit for affirming marriage, action by alleged wife against alleged husband for declaration as to marital status could not be maintained where she alleged neither validity nor invalidity of marriage and husband answered that he could neither admit nor deny her allegations concerning doubt as to marital status, in view of fact that marriage was not asserted by one party and denied by other. *Mary L. Gardner v. Frank H. Gardner* (1956, 98 U. S. App. D. C. 144, 233 F. 2d 23).

Chapter 5.—EJECTMENT

§ 16-501 [24: 161]. Parties.

NOTES TO DECISIONS

RIGHT OF ACTION

Where party occupying landowner's premises had not right to possession but his original entry had been lawful, and where action under forcible entry and detainer statute was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

§ 16-503 [24: 163]. Declaration—Form—Adverse possession.

NOTES TO DECISIONS

CONFORMING PLEADINGS TO PROOF

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was not entitled to possession, although his entry had been lawful, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance", in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

§ 16-510 [24: 170]. Joint tenants and tenants in common.

NOTES TO DECISIONS

RIGHT OF TENANT IN COMMON

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *O. Bagby v. M. Honesty* (D.C. Mun. App. 1959, 149 A. 2d 786).

§ 16-518 [24: 178]. Judgment conclusive as to title.

NOTES TO DECISIONS

COMMON LAW ABROGATED

The code section, making any final judgment rendered in action of ejectment conclusive as to title thereby established as between parties to action and all parties

claiming under them since commencement of action, was enacted to abrogate doctrine of common law as to inconclusiveness of judgment of ejectment and was not intended to change remedy of ejectment from one well defined as possessory in character to one in which title is automatically in issue. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

JURISDICTION OF MUNICIPAL COURT

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but, whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

Chapter 6.—EMINENT DOMAIN

§ 16-615 [25:50d]. Proceedings for condemnation of excess land—Payment of awards, damages, and costs—No assessment for benefits.

Whenever excess land is condemned by the commissioners of the District of Columbia, in accordance with the provisions of sections 16-612 to 16-618, the condemnation proceedings for the acquisition of such land shall be in accordance with sections 16-601 to 16-611, sections 7-202 to 7-215 inclusive, and/or sections 7-301 to 7-305, 7-313 to 7-318 and 7-320 to 7-323: *Provided*, That any and all appropriations available for the payment of awards, damages, and costs in condemnation proceedings under section 16-601 to 16-611 are hereby authorized for use in the payment of awards, damages, and costs in any and all condemnation proceedings under said sections for the acquisition of excess land, as provided in sections 16-612 to 16-618: *Provided further*, That any and all appropriations available for the payment of awards, damages, and costs in condemnation proceedings under sections 16-601 to 16-611 and/or sections 7-301 to 7-305, 7-313 to 7-318 and 7-320 to 7-323, for the acquisition of excess land as provided in sections 16-612 to 16-618: *And provided further*, That in any and all cases where such excess land is condemned, no assessments for benefits shall be levied by the jury in respect to the acquisition of said excess land. (Apr. 11, 1935, 49 Stat. 153, ch. 57, § 4.)

COMPILER'S NOTE

The foregoing section contains the reference to sections 7-202 to 7-215 which was incorrectly omitted from the section as contained in the 1951 edition of the District of Columbia Code.

§ 16-619 [25:100]. Condemnation of land for United States—Proceeding by Attorney General in United States District Court for the District of Columbia.

NOTES TO DECISIONS

COMMISSION'S AUTHORITY TO CONDEMN

The acts of Congress establishing the National Capital Planning Commission constituted authority for acquisition by the Commission by condemnation of property for comprehensive development of the park, parkway and playground system of the National Capital. *United States v. Lots 800 in Square 1928 etc., et al.* (1959, 169 F. Supp. 904)

JUST COMPENSATION

United States government's right to take over private property under its power of eminent domain is subject to constitutional requirement that private property shall not be taken for public use without just compensation. *United States v. One Parcel of Land etc.* (1955, 131 F. Supp. 443).

PRINCIPLES OF EQUITY IN CONDEMNATION

Determination of issues in a condemnation case rests upon broad principles of equity which go beyond technical requirements of local landlord and tenant law. *United States v. One Parcel of Land etc.* (1955, 131 F. Supp. 443).

Fifth Amendment of the federal Constitution contemplates that monies paid into common treasury by taxpayer shall be jealously guarded as a public trust against unfounded and unjust claims, but it also guarantees that government shall have regard for rights and welfare of its citizens and respect for restraints on its authority and shall deal fairly and equitably with each of them. *Id.*

SUMMARY JUDGMENT

In government's action for taking of property, government's motions in the alternative for judgment on pleadings, to dismiss the answer for failure to state a claim, to strike the answer except one paragraph, or for summary judgment would be treated as a motion for summary judgment. *United States v. Lot 800 In Square 1928 etc., et al.* (1959, 169 F. Supp. 904).

In proceeding by the United States at the request of National Capital Planning Commission to condemn property for park, parkway and playground system of National Capital, wherein the United States filed a motion for summary judgment, and fact issues claimed to exist were not properly set forth in answer or by means of affidavit but were merely listed on a page of defendant's memoranda, and list did not consist of specific allegations or statements of fact but contained speculative questions as to what procedures might or might not have been followed by Commission in instituting the action, by reason of their source and their nature, such questions did not form a sound basis for determining that a genuine issue of material fact existed so as to preclude granting of summary judgment. *Id.*

§ 16-628 [25:109]. Declaration of taking—Contents—Vesting of title and right to compensation—Taking possession.

NOTES TO DECISIONS

CONTROLLING STATUTE

The provision of the District of Columbia Code relating to acquisition of property for public purposes, and not the Act of 1890 which had been eliminated from the Code as being obsolete and superseded, was controlling for purpose of authorizing National Capital Planning Commission to condemn property for park, parkway and playground system of the National Capital and such statute authorized declaration of taking by the Commission. *United States v. Lot 800 In Square 1928, etc., et al.* (1959, 169 F. Supp. 904)

DECLARATION OF TAKING

Where government has not filed a declaration of taking, and judgment has not been entered nor has payment or deposit been made of an award of just compensation, title has not vested in the United States, and United States is free to abandon the taking or reduce the estate at any time, even if it has taken possession, and be liable only for actual use and occupancy of premises involved and for restoration damage. *United States v. One Parcel of Land etc.* (1955, 131 F. Supp. 443).

Where United States had been in possession of apartment building for more than three years, and title had vested in earlier proceeding by which such possession had been obtained, and judgment entered therein served as fair indication of amount of rental as might be expected to be awarded as just compensation, and United States had defined terms whereby it could terminate the

estate, United States could not abandon the estate except pursuant to terms of the taking. *Id.*

Where, in notices by government to terminate estate obtained in prior proceeding in regard to use and occupancy of apartment building, there was uncertainty on part of government regarding plans to surrender premises, such notices were not effective. *Id.*

EFFECTIVENESS OF DECLARATION

A declaration of taking by National Capital Planning Commission was not ineffective on ground that commission did not presently have appropriated fund in order to convert land for authorized public purposes, where there was on deposit in registry of court a sum which was the amount of money estimated by the commission to be just compensation for the property taken, which money undoubtedly was intended by Congress for purchase of land involved. *United States v. Lot 800 In Square 1928, etc., et al.* (1959, 169 F. Supp. 904).

Chapter 8.—HABEAS CORPUS

§ 16-808 [24: 208]. Right of parent, guardian, committee, or husband to writ.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *L. F. Bell et al. v. G. H. Leonard; A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

CUSTODY OF ILLEGITIMATE CHILD

A mother is the natural guardian of her child, even though the child be illegitimate, and as mother and natural guardian she has right to writ of habeas corpus directed to any person unlawfully detaining her minor child to end that child be produced before court which shall determine which of parties is entitled to custody of child. *L. F. Bell et al. v. G. H. Leonard; A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

Chapter 9.—JOINT CONTRACTS

§ 16-901 [24: 261]. Joint and several — Contracts — Definition.

NOTES TO DECISIONS

SEPARATE SUIT

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately under District of Columbia law does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe v. Moses et al.* (1954, 94 U. S. App. D. C. 21, 213, F. 2d 613).

§ 16-903 [24: 263]. Merger.

NOTES TO DECISIONS

APPEAL

If, in action for breach of contract, plaintiff, after trial upon merits, secures judgment in his favor against the 12 defendants who answered, he may nevertheless appeal from such judgment upon ground that he was entitled to judgment against two other defendants because quashing of service upon such defendants was erroneous, and judgment against the 12 will not have worked an extinguishment or merger of cause of action against the

other two defendants. *Youpe v. Moses* (1954, 94 U. S. App. D. C. 21, 213 F. 2d 613).

IN GENERAL

Where a woman borrowed money under false pretenses but conduct of her husband with regard to transactions was such he became obligated to repay the money borrowed, judgment rendered in action for money lent against the woman in Virginia was no bar to recovery in action for money lent against husband in District of Columbia. *Grimes v. Adams* (1952, 105 F. Supp. 30).

SEPARATE SUIT

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately under District of Columbia law does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe v. Moses* (1954, 94 U. S. App. D. C. 21, 213 F. 2d 613).

Chapter 12.—NEGLIGENCE CAUSING DEATH

§ 16-1201 [21: 1]. Liability.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiffs for additional time to qualify as personal representatives within meaning of wrongful death statute. *Paris et al. v. Braden M. D., Casualty Hosp., and Travelers Ins. Co.* (1956, 98 U.S. App. D.C. 219, 234 F. 2d 40).

AMENDED COMPLAINT

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator would be allowed to amend complaint to increase damages claimed from \$46,500 to \$71,500. *William Mitchell, Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

AMENDMENT OF COMPLAINT

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act and the other under the Survival Act, the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *D. Sornberger, Executrix, etc. v. District Dental Laboratory Inc. et ano.* (1959, 105 U.S. App. D.C. 290, 266 F. 2d 694).

BURDEN OF PROOF

Executor of estate of passenger who sustained fatal injuries in fall through open vestibule doors on fast moving train had, as part of his burden of proof, in action against railroad, obligation, as element in showing negligence of railroad in failing to inspect vestibule doors to see to it that they remained closed, to introduce sufficient evidence to permit conclusion that there was opportunity for further inspections than those made. *Pennsylvania R. R. Co. v. Pomeroy* (1956, 99 U. S. App. D. C. 272, 239 F. 2d 435).

A passenger or his representative has the burden, if he is to succeed in a suit for negligence against a railroad, of producing sufficient evidence to warrant inferences required to support verdict in his favor; plaintiff, who relies on an alleged act of specific negligence, is not relieved of burden of making prima facie proof of that act, nor is jury free to make any guess or conjecture it likes, without any evidentiary basis therefor. *Id.*

CHANGE OF VENUE

Under the statute providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under District of Columbia survival and death statutes, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *William Mitchell, Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

CONCURRING NEGLIGENCE

In action for taxicab passenger's wrongful death sustained in intersection collision with streetcar, evidence sustained implied findings that streetcar had entered intersection against traffic light and that taxi driver had failed to slow down so that death was caused by concurring negligence. *Coleman v. Moore et al.* (1952, 108 F. Supp. 425).

CONSTRUCTION

Congress did not, by enactment of wrongful death statute and compensation act applicable to District of Columbia, intend to create two separate and independent causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarrocchi v. James Kane Co. et al.* (1953, 116 F. Supp. 848).

EVIDENCE

In action against railroad for death of passenger who fell through open vestibule doors of fast moving train, theory that railroad was negligent because fact that doors were later found by ticket collector to be swinging freely justified inference that they were not fully closed at time of last inspection or that there were defects in the latching mechanisms, was not supported by evidence, in view of uncontradicted testimony of ticket collector, who was plaintiff's witness, that doors were closed at last inspection and were not defective, and in view of other reasonable explanations for fact of doors swinging freely. *Pennsylvania R. R. v. Pomeroy* (1956, 99 U. S. App. D. C. 272, 239 F. 2d. 435).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting there was no such insufficiency of evidence as would justify granting of defendant's motion for judgment non obstante verdicto and verdict was not so contrary to clear weight of evidence as to justify new trial. *Howard v. Capital Transit Co.* (1951, 97 F. Supp. 578, affirmed 196 F. 2d 593).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting, where there were no witnesses who could positively identify deceased as having been passenger, trial court did not err in permitting introduction of evidence of bus schedules, on night in question, on routes from points near decedent's place of employment to point near his home and evidence that decedent possessed weekly bus pass. *Id.*

FEDERAL EMPLOYEES COMPENSATION ACT

Where decedent's aunt petitioned for appointment as administratrix of estate of decedent, who died as result of injuries sustained in course of his employment as custodian at Howard University, on theory that estate had a valid cause of action for wrongful death against the university which decedent's widow was unwilling to assert, but petitioner, so far as record showed, presented no challenge to administrative determination of Bureau of Employees' Compensation that deceased was a federal employee and that decedent's widow was entitled to compensation under Federal Employees' Compensation Act, a determination which precluded any wrongful death action, petitioner was properly denied

appointment as administratrix. *Tomlin v. Irvine* (1954, 94 U. S. App. D. C. 101, 212 F. 2d 637).

INTEREST OF JUSTICE

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland, to Washington, D. C. *William Mitchell Sr., Administrator, etc. v. Henry Gundlach, etc.* (1955, 136 F. Supp. 169).

JURISDICTION OF ACTION

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to \$3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon v. Driggers* (D. C. Mun. App. 1956, 125 A. 2d 847).

LEGAL REPRESENTATIVE DEFINITION

Surviving children of decedent, were not personal representatives within meaning of wrongful death statute. In the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Civil Procedure Rule providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al. Braden M. D., Casualty Hosp., and Travelers Ins. Co.* (1956, 98 U. S. App. D. C. 219, 234 F. 2d 40).

MEASURE OF DAMAGES

In action for wrongful death of 9-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of \$129.90. *Rankin as Administratrix etc. v. Shayne Brothers* (1956, 98 U. S. App. D. C. 214, 234 F. 2d 35).

Death action under the wrongful death statute, being in derogation of the common law, cannot be liberalized by judicial construction to extend a right of action to widow for loss of consortium due to death of husband, but such extension of the common-law doctrine, if it is to be made, must be done by express provisions of statute. *Ciarrocchi v. James Kane Co. et al.* (1953, 116 F. Supp. 848).

Damages in death case must be measured in light of situation existing as of date of death and are not affected by subsequent events. *Coleman v. Moore et al.* (1952, 108 F. Supp. 425).

For wrongful death of wage-earning wife, husband was entitled to recover wife's potential financial contributions to maintenance of household and reasonable value of her services during their joint life expectancy, and therefore award of \$5,000 to husband was not excessive, and fact that he remarried two years after wife's death could not be considered. *Id.*

Award of \$3,000 to son for wrongful death of mother was not excessive where mother had helped to finance son's education, and fact that son abandoned school some time after mother's death had no significance. *Id.*

PARTIES DEFENDANT

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended com-

plaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided for bringing such action. *Harris v. Stone et al.* (1953, 115 F. Supp. 531).

REDUCTION OF VERDICT

Award of \$17,000 for death of new-born baby as result of fall through hole in delivery table at time of birth was not so extreme as to cause appellate court to act of own motion to reduce award, under statutory authority. *National Homeopathic Hospital v. Hord* (1953, 92 U. S. App. D. C. 204, 204 F. 2d 397).

REHEARING

Where request was made on petition for rehearing to have complaint, which had previously been considered only as one for wrongful death, considered as setting out cause of action for negligence, damages and malpractice, prior judgment dismissing complaint, which judgment had been affirmed by Court of Appeals, was modified so as to affirm dismissal only insofar as complaint set forth claim for death by wrongful act. *Paris et al. v. Braden M. D. Casualty Hosp., and Travelers Ins. Co.* (1956, 98 U. S. App. D. C. 219, 234 F. 2d 40).

RES IPSA LOQUITUR

Doctrine of res ipsa loquitur did not apply to case where passenger fell fatally through open vestibule doors of moving train, in view of accessibility of doors to all passengers and fact that doors could have been opened freely by anyone. *Pennsylvania R. R. Co. v. Pomeroy* (1956, 99 U. S. App. D. C. 272, 239 F. 2d 435).

WHO MAY SUE

Action under wrongful death act may only be maintained by personal representative if the wrongful act was one which would have entitled decedent to maintain it had death not ensued. *Myrtle V. Brown v. Curtin & Johnson, Inc.* (1955, 95 U. S. App. D. C. 234, 221 F. 2d 106).

WORKMEN'S COMPENSATION ACT

Workmen's Compensation Act applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death, and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under wrongful death statute making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil v. Shelton Bros. Trucking Co.* (1953, 116 F. Supp. 654).

§ 16-1202 [21: 2]. Party plaintiff—Statute of limitations.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiff for additional time to qualify as personal representatives within meaning of wrongful death statute. *Paris et al. v. Braden M. D., Casualty Hosp., and Travelers Ins. Co.* (1956, 98 U. S. App. D. C. 219, 234 F. 2d 40).

AMENDMENT

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended complaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided

for bringing such action. *Harris v. Stone et al.* (1953, 115 F. Supp. 531).

LEGAL REPRESENTATIVE, DEFINITION

Surviving children of decedent, were not personal representatives within meaning of wrongful death statute, in the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Civil Procedure Rule providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al. v. Braden M. D., Casualty Hosp., Travelers Inc. Co.* (1956, 98 U. S. App. D. C. 219, 234 F. 2d 40).

The term "legal representative," as used in statute providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of the deceased, is not necessarily restricted to personal representatives of deceased, but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas v. Doyle et al.* (1950, 88 U. S. App. D. C. 95, 187 F. 2d 207).

MEASURE OF DAMAGES

In action for wrongful death of nine-week-old child where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of \$129.90. *Rankin as administratrix etc. v. Shayne Brothers* (1956, 98 U. S. App. D. C. 214, 234 F. 2d 35).

STATUTE A LIMITATION OF RIGHT

Under District of Columbia law statute of limitations as to wrongful death is a limitation of the right and not merely of the remedy. *Hartford Accident & Indemnity Co. v. Eastern Air Lines Inc.* (1957, 155 F. Supp. 263).

STATUTE OF LIMITATIONS

Pendency of action for personal injuries did not toll statute of limitations on death claim. *Hudson v. Lazarus* (1954, 95 U. S. App. D. C. 16, 217 F. 2d 344).

Where workmen's compensation carrier brought action against airline for wrongful death of deceased for whose death it had paid compensation to widow, and such death occurred in District of Columbia which barred actions for wrongful death commenced more than one year after death, action begun in New York more than one year after death was barred. *Hartford Accident & Indemnity Co. v. Eastern Air Lines Inc.* (1957, 155 F. Supp. 263).

§ 16-1203 [21: 3]. Distribution of damages.

NOTES TO DECISIONS

MEASURE OF DAMAGES

In action for wrongful death of nine-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of \$129.90. *Rankin as administratrix etc. v. Shayne Brothers* (1956, 98 U. S. App. D. C. 214, 234 F. 2d 35).

Chapter 13.—PARTITION AND ASSIGNMENT OF DOWER

§ 16-1301 [25: 381]. Partition—When granted—Parties—Accounting by tenant in common.

NOTES TO DECISIONS

COMMUNITY OF INTEREST

Where greater part of a market building was held by the plaintiff except two market stalls held by the defend-

ants under purported leases containing provisions for perpetual renewal, parties were not "tenants in common" so as to entitle the plaintiff to partition under the Code of District of Columbia notwithstanding there was a community of interest in the entrances and exits of the building and other elements, where as to the stall holders such elements were in the nature of easements if the basic grants were considered fees or constituted implied conditions in the leases, if the basic documents were deemed leases. *Second Realty Corp. v. Krogmann and Di Stasio* (1956, 98 U. S. App. D. C. 283, 235 F. 2d 510).

LACHES

Where will devised property of testatrix to her daughter and grandson as tenants in common, and grandson attained majority in 1939 and was in military service between 1940 and 1941, action by grandson in 1950 for partition and accounting was not barred by laches. *Greene v. Murphy* (1952, 103 F. Supp. 585).

REMEDIES

The District of Columbia statute respecting partition recognizes two distinct remedies: partition in kind and partition through sale and division of the proceeds, but a person entitled to either remedy must be a tenant in common, a joint tenant or a coparcener. *Second Realty Corp. v. Krogmann and Di Stasio* (1956, 98 U. S. App. D. C. 283, 235 F. 2d 510).

Chapter 15.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

§ 16-1501 [25: 1]. Procedure—Sufficiency of bill—Parties—Decree—Recording—Service—Defendants under disabilities—Limitation.

NOTES TO DECISIONS

DURATION OF POSSESSION

Where plaintiff's possession for 31-year period of realty in which she was cotenant with others was admittedly actual, exclusive, and continuous, and, in the court's view, hostile, open and notorious, she was entitled to decree establishing title in her by adverse possession. *Louise C. Welch v. Unknown Heirs, Alienees and Devisees of John Lipscomb et al.* (1953, 96 U. S. App. D. C. 412, 226 F. 2d 776).

PURPOSE OF STATUTE

Statute which enables one who has become vested with title by adverse possession for more than 22 years to obtain good record title is a statute of repose and is designed to prevent further litigation and to settle a title which parties have suffered to remain unquestioned long enough to assume their acquiescence therein. *Louise C. Welch v. Unknown Heirs, Alienees and Devisees of John Lipscomb et al.* (1953, 96 U.S. App. D.C. 412, 226 F. 2d 776).

Chapter 16.—QUO WARRANTO

§ 16-1601 [24: 231]. Against whom issued—Civil action.

NOTES TO DECISIONS

NATURE AND SCOPE OF REMEDY

Quo warranto is only available against a person who unlawfully holds a public office or an office in a domestic corporation, or against a person or persons who unwarrantedly claim corporate status, and is not an appropriate remedy for attempted revocation of corporate charter of bar association on ground of alleged abuse and misuse of its charter. *United States v. Bar Association of District of Columbia* (1952, 91 U. S. App. D. C. 5, 197 F. 2d 408).

Chapter 17.—REFERENCE OF QUESTIONS OF LAW AND FACT

§ 16-1707 [24: 97]. Award—Setting aside—Modification—Causes.

NOTES TO DECISIONS

SETTING ASIDE ARBITRATORS' AWARD

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern v. Stern Co., of Washington, D. C.* (1952, 91 U. S. App. D. C. 339, 200 F. 2d 364).

Award of referee or arbitrator may be vacated or modified only on grounds clearly specified by statute. *Id.*

§ 16-1709 [24: 99]. Appeals in equity causes.

NOTES TO DECISIONS

QUESTIONS ON APPEAL

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern v. Stern Co. of Washington, D. C.* (1952, 91 U. S. App. D. C. 339, 200 F. 2d 364).

Chapter 19.—SET-OFF

§ 16-1901 [24: 411]. What can be set off.

NOTES TO DECISIONS

TENANTS DEFENSES

When tenant is sued for possession of realty for non-payment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Siedenberg v. Burka* (D.C. Mun App. 1954, 106 A. 2d 499)

TITLE 17.—REVIEW

Chapter 1.—JURISDICTION AND METHOD

§ 17-102 [18:27]. Court of Appeals—Appeals from interlocutory orders in criminal case prohibited.

CROSS REFERENCE

See §§ 45-1609 and 45-1610 for provisions governing jurisdiction and review in Rent Control cases.

NOTES TO DECISIONS

APPEALS BY GOVERNMENT

Criminal appeals by the government in District of Columbia are not limited to categories set forth in special

jurisdictional statute, although as to cases of the type covered by that statute, its explicit directions will prevail over general terms of District of Columbia Code. *Carroll v. United States* (1957, 354 U. S. 394, 77 S. Ct. 1332).

PRETRIAL ORDER

Pretrial order suppressing evidence of a recording and a transcription of a telephone conversation, did not have a final and irreparable effect on rights of party in prosecution for perjury nor was it a "final disposition" of a claimed right and order was not appealable. *United States v. Warren L. Stephenson* (1955, 96 U. S. App. D. C. 44, 223 F. 2d 336).

PART III

PROBATE LAW AND PROCEDURE

TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

Chap.	Sec.	
9. Uniform Simultaneous Death	901	§ 18-107. Repealed. August 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (d).

Chapter 1.—LAW OF DESCENTS

§ 18-101 [25: 231]. Course of descents generally.

On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred as follows: To those persons, who, according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestates, would be the distributees to take the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus of personalty; and such kindred (including the surviving spouse as such) shall take in the same proportions as are or shall be fixed by such laws relating to personal property, and shall take as tenants in common. (Mar. 3, 1901, 31 Stat. 1342, ch. 854, § 940; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 3 (A); Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 1.)

AMENDMENT

1957—Act of August 31, 1957, cited to text, amended section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment".

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

§ 18-103. Repealed. August 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (a).

Section related to right of inheritance of children in being and after born children.

Effective date of repeal is November 29, 1957.

§ 18-104. Repealed. August 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (b).

Section related to kindred of the whole and half blood. Effective date of repeal is November 29, 1957.

§ 18-105. Repealed. August 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (c).

The section dealt with the degrees of representation in the estate of an intestate.

Effective date of repeal is November 29, 1957.

§ 18-107. Repealed. August 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (d).

Effective date of repeal is November 29, 1957.

Section dealt with the rights of illegitimate children.

§ 18-111. Repealed. August 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (e).

Section dealt with subject matter of escheat

Effective date of repeal is November 29, 1957.

Chapter 2.—DOWER AND CURTESY RIGHTS

Sec

18-201a. Right of dower abolished—Exception—Intestate share—Right of spouse to encumber real property.

18-210. Devise or bequest to spouse

18-212. Rights of surviving spouse if there is no renunciation.

18-215a. Estate by the curtesy abolished

§ 18-201a. Right of dower abolished—Exception—Intestate share—Right of spouse to encumber real property.

(a) The right of dower, and its incidents, are hereby abolished; except that with respect to parties who intermarried prior to November 29, 1957, the wife shall retain her dower rights in all real estate whereof the husband, prior to November 29, 1957, was seized of an estate of inheritance at any time during the marriage. As to any such real estate of which the husband dies seized, the share of the wife therein, as provided in section 18-101, shall be in lieu of her dower rights unless she elects to take the same in similar manner and within the period as authorized in section 18-211, providing for renunciation of devises and bequests under wills.

(b) The intestate share as provided by section 18-101, shall attach to all real property owned by husband or wife during coverture: *Provided*, That neither husband nor wife hereafter shall have the right to convey, transfer or encumber his or her real property free of the surviving spouse's interest in case of intestacy, as provided in sections 18-101, 18-215a, 18-201a, 18-210 to 18-212, 18-714 to 18-717, and 30-201, without joinder of the other spouse. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 3.)

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment".

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-

716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

NOTES TO DECISIONS

PURPOSE OF STATUTE

Purpose of statute providing that neither husband nor wife shall have right to convey, transfer or encumber his or her real property free of surviving spouse's interest in case of intestacy without joinder of other spouse is to prevent the destruction of the intestate share of one spouse by a conveyance made by other spouse during lifetime of the former. *J. Vito v. H. B. Bonart and M. M. Vito* (1958, 163 F. Supp. 747).

SECTIONS 18-201a AND 18-204 RECONCILED

Statute depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and subsequent statute providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and latter statute did not repeal former statute. *J. Vito v. H. B. Bonart and M. M. Vito* (1958, 163 F. Supp. 747).

§ 18-204 [14:31]. Release of dower when wife is insane or has been absent for seven years.

NOTES TO DECISIONS

SECTIONS 18-201a AND 18-204 RECONCILED

Statute depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and subsequent statute providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and latter statute did not repeal former statute. *J. Vito v. H. B. Bonart and M. M. Vito* (1958, 163 F. Supp. 747).

§ 18-210. Devise or bequest to spouse.

Subject to the provisions of section 18-212, every devise of real estate or any interest therein, and every bequest of personal estate or any interest therein, to the surviving spouse shall be construed to be intended in bar of his or her share in decedent's estate (including dower rights, if any) unless it be otherwise expressed in the will. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1172; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 5.)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

§ 18-211 [14:38]. Renunciation of devises and bequests to Spouse—Form—Limitation—Interest to be taken by widow or widower upon such renunciation.

Subject to the provisions of section 18-212, a widow or widower shall be barred of any rights or

interest she or he may have in real or personal estate by any such devise or bequest unless within six months after administration may be granted on the deceased spouse's estate she or he shall file in the probate court a written renunciation to the following effect:

I, A. B., widow or widower of ----- late of -----, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband or wife exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my said spouse.

If, during said period of six months, a suit should be instituted to construe the will of the husband or wife, the period of six months for the filing of such renunciation shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise.

By renouncing all claim to any and all devises and bequests, made to her or him by the will of her husband or his wife, the surviving spouse shall be entitled to such share or interest in the real and personal estate which she or he would have taken had the deceased spouse died intestate. Except in cases of valid antenuptial or postnuptial agreements, and except in cases when it is expressly waived in a writing filed with the probate court within said six months period, this provision for the surviving spouse shall apply with like effect (without formal renunciation) to cases where the wife or husband has made no devise or bequest to her husband or his wife, and also to cases where nothing passes by such devise or bequest. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1173; Apr. 19, 1920, 41 Stat. 576, ch. 153; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 6.)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

NOTES TO DECISIONS

CAVEAT

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1947, 111 F. Supp. 453).

CONSTRUCTION

Under District of Columbia Code, where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by

her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheylan* (1952, 90 U. S. App. D. C. 277, 195 F. 2d 776).

Under District of Columbia Code, a widow who renounced a will made by her husband, where there were no intervening heirs, was entitled to whole of her husband's personal estate. *Wegenast v. Pheylan* (1951, 98 F. Supp. 371).

EFFECT OF DEVISE

Where wife has vested remainder interest in trust property, but interest of wife was divested because she predeceased life tenant, husband had no estate of curtesy in the trust property on death of wife and death of life tenant. *Noreen et al. v. Sparks et al.* (1952, 103 F. Supp. 588).

§ 18-212. Rights of surviving spouse if there is no renunciation.

If the surviving spouse does not renounce as provided in section 18-211, she or he shall be entitled to receive the benefit of all provisions in her or his favor in the will of the deceased spouse and shall share, in accordance with sections 18-701, 18-702, 18-703, 18-704 and 18-101, in any estate of the deceased spouse undisposed of by the will. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1174; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 7.)

AMENDMENTS

1957—Act of August 31, 1957, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

§ 18-213. Repealed. August 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (f).

Section dealt with subject matter of devise of a part only of either realty or personalty as a bar.

Effective date of repeal is November 29, 1957.

§ 18-214. Repealed. August 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (g).

Section dealt with effect of a devise on a widow, when nothing passed to her under such devise.

Effective date of repeal is November 29, 1957.

§ 18-215. Repealed. August 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (h).

Section dealt with the estate by the curtesy.

Effective date of repeal, November 29, 1957.

§ 18-215a. Estate by the curtesy abolished.

The estate by the curtesy in the real estate of a wife dying after the effective date of this section, and its incidents, are hereby abolished. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 2.)

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the

provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

Chapter 4.—INVENTORY OF ASSETS

§ 18-401 [29: 171]. Inventory—When made—Contents—Exceptions.

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 88 U. S. App. D. C. 166, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797).

§ 18-407 [29: 177]. Collector's inventory.

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 88 U. S. App. D. C. 166, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797).

Chapter 5.—CLAIMS OF CREDITORS

§ 18-501 [29: 191]. Creditor's rights against property of nonresident decedent—Limitation.

NOTES TO DECISIONS

CLAIM IN PROCESS OF ADMINISTRATION

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 88 U. S. App. D. C. 166, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797).

MEASURE OF TAX ON ENCUMBERED PROPERTY

While a tax on inheritance or succession is not a property tax but a duty or excise laid on the privilege of taking property by descent, it is measured by the market value of the transferred property at the time the owner died. *Hyman v. District of Columbia* (1957, 101 U. S. App. D. C. 179, 247 F. 2d 585).

Where an unqualified devise transfers legal title, if it is encumbered at the date of death, the then market value of the property transferred is the gross value, less the encumbrance for inheritance tax purposes. *Id.*

The District of Columbia inheritance tax statute manifests a congressional intention to require that such tax be computed on the value of the realty or what the beneficiary actually received, and not the gross value of the realty transferred. *Id.*

Where decedent owed her brother a large sum of money and her will provided that if he had a claim on her realty interest, devise thereof should be "subject to such claim

or lien" District of Columbia Inheritance Tax should have been computed not on the gross value of the realty received by the brother, but on the value thereof after the brother's claim thereon had been deducted. *Id.*

TIME FOR ASSERTION OF CLAIMS

Statute providing that District of Columbia assets of a nonresident decedent are subject to claims of persons domiciled in District, and subject to administration in District, provided prosecution of claims is begun within six months after death of decedent, was intended to extend protection to local creditors for six months only, and where no claims were filed against bank account of a nonresident decedent within six months of death bank was required to honor demand of nonresident representative. *Ernest T. Gearheart, Jr., Administrator, etc. v. Bank of Commerce & Savings of Washington, D.C.* (1955, 138 F. Supp. 472).

§ 18-516 [29:206]. Claims may be rejected and disputed.

NOTES TO DECISIONS

EXECUTORS SPECIAL UNDERTAKING

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Robert H. McNeill and T. Bruce Fuller v. Maude Selby Jamison and Glens Falls Ind. Co.* (D. C. Mun. App. 1955, 116 A. 2d 160).

§ 18-518 [29:208]. Period during which creditors may file suit after claim is contested.

COMPILER'S NOTE

Catch line was changed to delete reference to specific number of months.

NOTES TO DECISIONS

ACTION AGAINST DEVISEE

A right of action by decedent's creditors to subject decedent's property in hands of devisee under decedent's will to payment of plaintiffs' claims was not extinguished by their failure to institute action against executor of decedent's estate within three months, limited by statute, after executor's rejection of claims. *Robinson v. Henderson* (1956, 145 F. Supp. 463).

CLAIM IN PROCESS OF ADMINISTRATION

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 88 U. S. App. D. C. 166, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797).

COMPUTATION OF TIME

If a claim is exhibited to the executor, legally authenticated, and the executor rejects it, his rejection sets in motion the running of the three-month statute of limitations, and any claim sued upon more than three months after rejection is barred. *R. H. Lewis v. L. E. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

Action on claim against testator's estate filed more than two years and 11 months after rejection of claim by executrix was barred. *Robert H. McNeill and T. Bruce Fuller v. Maude Selby Jamison and Glens Falls Ind. Co.* (D. C. Mun. App. 1955, 116 A. 2d 160).

CONSTRUCTION

The three-month statute of limitations is designed to facilitate the administration and distribution of estate,

but since it is an exceptional abbreviation of the general statute of limitations, it must be given a construction almost penal in its strictness, and hence if an executor rejects a claim which has not been exhibited to him, legally authenticated, his attempted rejection does not start the running of the short statute of limitations. *R. H. Lewis v. L. E. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

EXECUTORS SPECIAL UNDERTAKING

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Robert H. McNeill and T. Bruce Fuller v. Maude Selby Jamison and Glens Falls Ind. Co.* (D. C. Mun. App. 1955, 116 A. 2d 160).

SUFFICIENCY OF EXHIBITION

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *R. H. Lewis, v. L. E. Smith Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188)

§ 18-523 [29:213]. Retaining for claims.

NOTES TO DECISIONS

BASIS FOR REJECTION

Where claimant filed a duly authenticated claim with the office of the register of wills and the claim was entered on the claims docket, ruling that the executor could take notice of the claim from the court's records and effectively reject it, was erroneous, since the only way in which the executor could reject the claim was if there was an actual exhibition of the claim to him, legally authenticated. *R. H. Lewis v. L. E. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

SUFFICIENCY OF EXHIBITION

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *R. H. Lewis v. L. E. Smith Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188)

§ 18-526 [29:216]. Notice to creditors to file claims.

NOTES TO DECISIONS

CLAIM IN PROCESS OF ADMINISTRATION

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 88 U. S. App. D. C. 166, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797).

Chapter 6.—SALE OF ASSETS

§ 18-602 [29:232]. Order for sale.

NOTES TO DECISIONS

JURISDICTION

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *J. M. Littlepage et al. v. Hart and Littlepage Jr* (1957, 102 U. S. App. D. C. 111, 250 F. 2d 774).

§ 18-607 [29: 237]. Sale of real estate.

NOTES TO DECISIONS

JURISDICTION

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *J. M. Littlepage et al. v. Hart and Littlepage Jr.* (1957, 102 U. S. App. D. C. 111, 250 F. 2d 774).

§ 18-611. Appointment of trustee to sell real estate—Bond of trustee.

NOTES TO DECISIONS

REMOVAL OF TRUSTEE

Where testator devised realty in trust to cotrustees, and the trustees were incompatible, and one trustee had employed obstructionist tactics to hinder execution of trust by the other, and had taken no steps himself to execute the trust, under District of Columbia Code, court would appoint other trustee as sole trustee. *Hughes et al. v. Hughes* (1953, 112 F. Supp. 899).

Chapter 7.—DISTRIBUTION OF SURPLUS—BENEFICIARIES

§ 18-702 [29: 282]. When surviving spouse entitled to whole.

RENUNCIATION OF WILL

Under District of Columbia Code, where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheylan* (1952, 195 F. 2d 776, 90 U. S. App. D. C. 277).

Under District of Columbia Code, a widow who renounced a will made by her husband, where there were no intervening heirs, was entitled to whole of her husband's personal estate. *Wegenast v. Pheylan* (1951, 98 F. Supp. 371).

§ 18-703 [29: 283]. When surviving spouse entitled to one-third.

NOTES TO DECISIONS

RIGHT TO DECEDENT'S EARNED INCOME

Code subdivision, providing for compensation for period between discharge and reinstatement and that reinstated employee shall "for all purposes" be deemed to have rendered service during such period, must be read in its entirety with all of Code provisions for payment of compensation "due" deceased employee, and under the Code provisions, so read, widow, rather than estate, of deceased employee who had not designated beneficiary was entitled to amount paid in settlement of deceased employee's claim for back salary even though it had not yet been determined at time of death that he was entitled to reinstatement and back pay. *R. M. Joyce, individually and as Admtr. etc. v. B. N. Scott, etc.* (1959, U.S. App. D.C. 177, 265 F. 2d 369).

§ 18-704 [29: 284]. When surviving spouse entitled to one-half.

NOTES TO DECISIONS

WIDOW'S PREFERENCE

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Corrine B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

§ 18-714 [29: 294]. Share of posthumous children.

No right in the inheritance to real or personal property shall accrue to or vest in any person other than the children of the intestate and their descendants, unless such person is in being and capable in law to take as heir or distributee at the time of the intestate's death; but any child or descendant of the intestate born after the death of the intestate shall have the same right of inheritance as if born before his death. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 386; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9 (a).)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

§ 18-715 [29: 295]. No distinction between whole and half-blood.

In no case shall there be any distinction between the kindred of the whole and the half-blood. (June 30, 1902, 32 Stat. 530, ch. 1329, § 386a; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9(b).)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

§ 18-716 [29: 296]. Share of illegitimate children—Their issue—Mother.

The illegitimate child or children of any female and the issue of any such illegitimate child or children shall be capable to take real and personal estate by inheritance from their mother, or from each other, or from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock.

When such illegitimate child or children shall die leaving no descendants, or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children shall be entitled to the real and personal estate of such illegitimate child or children, and if the mother be dead, the heirs or distributees of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock. (Mar. 3, 1901, 31 Stat. 1250, ch. 854,

§ 387; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9 (c).)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment".

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

NOTES TO DECISIONS

PROCEEDS OF INSURANCE POLICY

Where claim under Federal Employees' Group Life Insurance Act arose in District of Columbia, wherein, with regard to descent of personality, illegitimate children are on equal standing with those born in lawful wedlock insofar as mother's estate is concerned, illegitimate children of insured were entitled to share proportionately with her legitimate children in proceeds of policy. *W. Brantley and H. Mathis v. E. J. Skeens, Guardian ad litem* (1959, 105 U.S. App. D.C. 246, 266 F. 2d 447).

§ 18-717 [29: 297]. Escheatment.

If there be no widow or widower or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property shall escheat to the District of Columbia to be used by the Commissioners of the District of Columbia for the benefit of the poor. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 388; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9 (d).)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment".

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

NOTES TO DECISIONS

VETERANS ADMINISTRATION PAYMENTS

Estate of decedent derived from payments made by Veterans Administration for benefit of decedent, who was not survived by next of kin, and whose last legal residence was in the District of Columbia escheated, under express terms of statute, to the Government and not to the District of Columbia. *In re Germanovich's Estate* (1954, 122 F. Supp. 169).

Chapter 9.—UNIFORM SIMULTANEOUS DEATH

Sec.

- 18-901. Purpose—Effective date.
- 18-902. No sufficient evidence of survivorship.
- 18-903. Survival of beneficiaries.
- 18-904. Joint tenants or tenants by the entirety.

Sec.

- 18-905. Insurance policies.
- 18-906. Chapter does not apply if decedent provides otherwise.
- 18-907. Chapter not retroactive.
- 18-908. Uniformity of interpretation.
- 18-909. Repeal.
- 18-910. Severability.

§ 18-901. Purpose—Effective date.

This chapter, providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously and to make uniform the law with reference thereto, shall be in effect in the District of Columbia on and after the date of the enactment of this chapter. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 1.)

CROSS REFERENCE

Negligence causing death, see sections 16-1201, 16-1202.
Joint tenants action for accounting, see section 16-101.
Joint Contracts, see Title 16, ch. 9.
Laws of descent and distribution generally, see Title 18, chapters 1 to 8.

EFFECTIVE DATE

Section 1 of the act of March 28, 1958, Pub. L. 85-356, classified to sections 18-901 to 18-910, provides that the act shall be effective in the District on and after the date of its enactment, which makes the act effective on March 28, 1958.

POPULAR NAME

Section 9, of the act of March 28, 1958, cited to text, provides as follows: This act may be cited as the "District of Columbia Uniform Simultaneous Death Act".

§ 18-902. No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 2.)

§ 18-903. Survival of beneficiaries.

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 3.)

§ 18-904. Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed, or descend as the case may be, one-half as if one had survived and one-half as if the

other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed or descended shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 4.)

§ 18-905. Insurance Policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 5.)

§ 18-906. Chapter does not apply if decedent provides otherwise.

This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here pro-

vided. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 6.)

§ 18-907. Chapter not retroactive.

This chapter shall not apply to the distribution of the property of a person who has died before it takes effect. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 7.)

§ 18-908. Uniformity of interpretation.

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those States which enact it. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 8.)

§ 18-909. Repeal.

All laws or parts of laws inconsistent with the provisions of this chapter are hereby repealed. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 10.)

§ 18-910. Severability.

If any of the provisions of this chapter or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are declared to be severable. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 11.)

TITLE 19.—WILLS

Chapter 1.—WILLS IN GENERAL

§ 19-101 [29: 21]. Capacity to make will.

NOTES TO DECISIONS

DIRECTED VERDICT

Where trial judge thought testatrix was not in a condition to execute a serious document, such as a will or deed or contract, with judgment and understanding at time she signed will which had been written for her, direction of verdict upholding the will was error, and judgment would be reversed and cause remanded for new trial. *Collins v. Dobbins* (1952, 90 U. S. App. D. C. 287, 198 F. 2d 763)

§ 19-103 [29: 23]. Form of will—Witnesses—Alteration—Revocation.

NOTES TO DECISIONS

EVIDENCE

In probate proceeding, testimony that, some months after tearing of will, testator had told witness that he had left his wife all his property and wanted his brothers to have nothing was relevant to issue whether tearing of will by testator and his widow was animo revocandi and its exclusion was prejudicial error. *Mildred B. Savoy v. Rodney P. Savoy et ano.* (1954, 94 U. S. App. D. C. 411, 220 F. 2d 364).

REVOCATION—WHAT CONSTITUTES

In probate proceeding in which widow offered torn will for probate where she testified that she and testator had torn will during argument, if jury found the tearing so occurred, they had to determine whether or not the tearing was animo revocandi. If tearing of a will is accidental or unaccompanied by necessary intent, it does not constitute revocation. *Mildred B. Savoy v. Rodney P. Savoy et ano.* (1954, 94 U. S. App. D. C. 411, 220 F. 2d 364).

§ 19-104 [29: 24]. Devises to attesting witnesses void.

NOTES TO DECISIONS

INTESTATE SHARE

Although by statutes legacies to persons who are witnesses to will and testify to establish same, are void, a witness-legatee who was also an heir at law could testify as to the execution of the will and take his bequest thereunder, but in an amount no greater than his intestate share. *Manoukian v. Tomasian* (1956, 99 U. S. App. D. C. 57, 237 F. 2d 211).

§ 19-105 [29: 25]. Attesting devisee not to retain nor demand any property under will or codicil.

NOTES TO DECISIONS

STATUTORY CONSTRUCTION

Statutes providing that legacies to persons who are witnesses to a will and testify to establish same are void, are not, unlike most portions of District of Columbia Code, acts of Congress passed for the government of the District, but are part of the law of the District because they are British statutes which were recognized as being in force in Maryland prior to cession of the District in 1801 and maintained in effect by act of Congress retaining all common law in force in Maryland. *Manoukian v. Tomasian* (1956, 99 U. S. App. D. C. 57, 237 F. 2d 211)

§ 19-110 [29: 30]. Lapsed or void devises.

NOTES TO DECISIONS

DEATH OF LEGATEE

A sum bequeathed by will to testator's deceased brother's widow, who predeceased testator, goes to her issue on his death. *Second National Bank of Washington v. Spinks* (1953, 122 F. Supp. 153)

Under will devising half of residuary estate to testatrix' sister who predeceased testatrix, that portion of residue went to sister's children rather than to heirs of the testatrix. *Mitchell v. Merriam et al., Mitchell v. Mitchell* (1951, 188 F. 2d 42, 88 U. S. App. D. C. 213, certiorari denied 341 U.S. 935, 71 S. Ct. 855)

VESTED REMAINDER

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix's vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. *Bank of Galesburg, etc. v. Lawrenson, Jr., etc., and Waters, etc.* (1956, 99 U. S. App. D. C. 345, 240 F. 2d 31).

Chapter 2.—DEVICES BY WILL

§ 19-202 [29: 42]. Bequests for religious purposes.

NOTES TO DECISIONS

DEPENDENT RELATIVE REVOCATION

Where two prior wills contained residuary devises identical with that in latest will, which will was drawn for purpose of correcting formal defects within 30 days of testatrix' death, and provisions in latest will for benefit of two religious institutions were invalid under statute rendering invalid testamentary gifts for benefit of any religious sect made within one month of death, religious institutions would be held entitled to receive devises for them under earlier wills under doctrine of "dependent relative revocation," and notwithstanding revocatory clause in latest will, on ground that testatrix did not intend that revocatory clause should be effective until new devise became effective. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al., Williams et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al., Stone et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1950, 87 U. S. App. D. C. 351, 187 F. 2d 357).

Chapter 3.—PROBATE OF WILLS

§ 19-303 [29: 53]. Guardian ad litem for infant or non compos.

NOTES TO DECISIONS

APPEARANCE OF INCOMPETENCY

The statute providing that whenever, in a proceeding to probate a will, it shall "appear" that a party interested is non compos mentis, the court may appoint a guardian with authority to file a caveat, did not authorize the filing of an amendment to a caveat to a will probated in 1953 alleging the incompetency of the son of testatrix in 1955, since the incompetency did not "appear" when the will was probated. *Merchant v. Davies* (1957, 100 U. S. App. D. C. 258, 244 F. 2d 347).

§ 19-307 [29:57]. Caveat—Will not be probated while issues pending.

NOTES TO DECISIONS

PARTY IN INTEREST

Interest which caveator must possess to enable him to assail validity of will in District of Columbia is such that, had testator died intestate, caveator would have been entitled to distributive share in estate, and such share would be different from that which caveator would be entitled to if will were held valid. *Kimberland v. Kimberland* (1953, 92 U. S. App. D. C. 145, 204 F. 2d 38).

RIGHT TO ADMINISTER

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 92 U. S. App. D. C. 145, 204 F. 2d 38).

§ 19-308 [29:58]. Admission to probate.

NOTES TO DECISIONS

SUFFICIENCY OF INTEREST

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1947, 111 F. Supp. 453).

TIME FOR FILING

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months

allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1947, 111 F. Supp. 453).

§ 19-309 [29:59]. Caveat.

NOTES TO DECISIONS

TIME FOR FILING

Where caveat to will probated in 1953 alleged that son of testatrix was incompetent when will was probated and proposed amendment alleged that incompetence was known or should have been known to the proponent and was not brought to the attention of the probate court, proposed amendment was properly rejected in view of the one-year statute of limitations on filing caveats, which contains no exceptions giving an incompetent or his committee a longer time than one year in which to file a caveat. *Merchant v. Davies* (1957, 100 U. S. App. D. C. 258, 244 F. 2d 347).

§ 19-313 [29:63]. Wills filed prior to June 8, 1898, may be probated as of real estate.

NOTES TO DECISIONS

EFFECT OF PROBATE OF WILLS

Stepgrandchildren of a decedent lacked standing to maintain action to annul marriage of decedent and to set aside conveyance of interest in realty to decedent's wife after marriage, since stepgrandchildren as such could not contest marriage alone, and their claim to realty rested upon will of decedent which devised realty to decedent's stepgrandchildren, but will was not probated so that stepgrandchildren could not take realty even if conveyance and marriage were voided. *Norris v. Harrison* (1952, 198 F. 2d 953).

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

Chapter 1.—GENERAL PROVISIONS

§ 20-101 [29: 71]. Competency—Determination by probate court.

NOTES TO DECISIONS

APPOINTMENT OF OUTSIDER

Under section of District of Columbia Code providing that, if intestate leaves widow or child, administration shall be granted either to widow or child, appointment of complete outsider as administrator was not justified, even though widow had failed in earlier proceeding to establish documents proffered by her as decedent's will and was seeking to charge estate with expense of that proceeding and relations between widow and decedent's child were strained. *P. G. Brooks v. W. C. DeLacy, etc.* (1958, 103 U.S. App. D.C. 223, 257 F. 2d 227).

CUSTODY OF CHILD

In proceedings involving custody of child, paramount concern is child's welfare and all the considerations, including rights of parent to child, must yield to its best interest and well-being, but application of that broad principle does not demand that right of a parent be ignored. *B. H. Davis v. J. C. Journey et ano.* (D.C. Mun. App. 1958, 145 A. 2d 846).

DERIVATION OF PROBATE SYSTEM

The District of Columbia probate system is largely derived from Maryland, and, ordinarily, courts of the District follow Maryland decisions. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

DISCRETION OF COURT

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

DISQUALIFICATION MANDATORY

District of Columbia Code provision prohibiting granting of letters testamentary or of administration to person convicted of infamous crime is not discretionary, and if such disqualification is discovered after letters have been issued appointment should be revoked. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189).

FRAUD IN SECURING APPOINTMENT

If trial court found that administrator had perpetrated fraud in securing appointment, trial court should exercise its discretion to determine whether fraud was a sound reason for it to depart from statutory scheme in designating administrator. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189).

GROUND FOR REMOVAL

In proceeding on petition for removal of administrator on ground that he had been convicted of an infamous crime, order refusing removal must be vacated and set aside in order that there could be an express judicial finding made as to whether administrator had been convicted as alleged, and order entered for his removal if finding was against him on that issue. *G. J. Dial v. C. W.*

Johnson, Administrator etc. (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189).

§ 20-105 [29: 75]. Letters de bonis non—Form—Duties.

NOTES TO DECISIONS

DISCRETION OF COURT

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

§ 20-107 [29: 77]. Removal of co-executor, co-administrator, or co-collector for negligence or misconduct—Complaint—Recovery of loss or damage.

NOTES TO DECISIONS

GROUND FOR REMOVAL

Statute of District of Columbia providing that if any joint executor, administrator, or collector shall apprehend that he is likely to suffer by negligence or misconduct in administration or improper use or misapplication of assets of estate by any coexecutor, coadministrator, or cocollector, he may make complaint to court, and if complaint shall be adjudged "well founded," court shall have authority, in its discretion, to revoke powers and authority of executor, administrator, or collector, does not necessarily require that complaint be adjudged "well founded" in sense that there be a final determination on merits of question of ownership of controverted property, before removal can be had. *Goldsborough v. Marshall & Ward* (1957, 100 U. S. App. D. C. 134, 243 F. 2d 240).

Where husband of deceased wife and a daughter of deceased wife by former marriage were appointed as co-administrators of estate of deceased wife, and controversy arose as to whether certain realty standing in name of deceased wife and sum of money deposited in husband's name were in fact property of husband, and daughter filed a motion under statute of District of Columbia as administrator for removal of husband as co-administrator, husband's removal was authorized by statute, on ground that daughter's complaint was "well founded." *Id.*

JURISDICTION

Where husband of deceased wife and one of deceased wife's daughters were appointed as coadministrators of estate of wife, and daughter filed motion for removal of husband as coadministrator, because of controversy as to whether realty standing in deceased wife's name and sum of money deposited in husband's name were in fact property of husband, and federal District Court entered first order removing husband and appointing a neutral party as administrator, and husband then appealed from first order, District Court had jurisdiction to enter second order appointing another neutral party as administrator, when first neutral party declined appointment. *Goldsborough v. Marshall & Ward* (1957, 100 U. S. App. D. C. 134, 243 F. 2d 240).

§ 20-116 [29: 86]. Continuing decedent's business—Verified petition—Affidavits—Contents—Accounting—Debts of business as expenses of estate.

The probate court may, in its discretion, authorize any fiduciary accountable to it to continue any

business of the decedent for a period of twelve months after decedent's death: *Provided*, That, upon good cause shown, the probate court may, in its discretion, extend the said period. No order shall be entered so authorizing a fiduciary until he shall have filed a petition under oath, supported by the affidavits of two reputable persons familiar with the decedent's business, setting forth the appraised value of the business, whether the decedent conducted it at a profit or loss and the approximate amount thereof, and the estimated amount of the expenses per month necessary to be incurred in order to continue the business. Any fiduciary who is given such authorization shall file monthly statements showing all receipts and disbursements, debts contracted and obligations incurred, and the profit or loss; and the court, in its discretion, may order the discontinuance of the business at any time.

Debts contracted and obligations incurred by the fiduciary in so continuing the business of the decedent shall be deemed to be an expense of administration of the estate. (Apr. 19, 1920, 41 Stat. 556, ch. 153, § 123a; June 18, 1953, 67 Stat. 66, ch. 131, § 1.)

AMENDMENTS

1953—Act of June 18, 1953, amended the first sentence with the added provision that the probate court could upon good cause shown in its discretion extend the period to continue a business.

Chapter 2.—ADMINISTRATORS

§ 20-201 [29: 101]. Granting of letters of administration.

NOTES TO DECISIONS

CONTENTS OF PETITION

Where petition of sister of deceased in the United States District Court for the District of Columbia properly asked for letters of administration and necessarily claimed that deceased died intestate because his holographic will was unwitnessed, the petition did not make two claims and had only one purpose, namely, the securing of administration, though it prayed that the holographic will be denied probate and record, and therefore appeal of sister from order denying motion for rehearing would not be dismissed, on ground that it offended Federal Rule of Civil Procedure providing that when more than one claim for relief is presented, court may direct entry of final judgment on one or more but less than all of the claims only on expressed determination that there is no just reason for delay and on express direction for entry of judgment. *V. Z. Shafer v. Children's Hospital Society of Los Angeles, Calif.* (1959, 105 U.S. App. D.C. 123, 265 F. 2d 107).

DISCRETION OF COURT

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by a specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

§ 20-203 [29: 103]. Special bond.

NOTES TO DECISIONS

ATTORNEY'S FEES

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share

of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Otho Ashton et ano. v. Arravera Ashton* (D. C. Mun. App. 1955, 117 A. 2d 459)

§ 20-204 [29: 104]. Persons entitled to administer—Surviving spouse or children.

NOTES TO DECISIONS

APPOINTMENT OF OUTSIDER

Under section of District of Columbia Code providing that, if intestate leaves widow or child, administration shall be granted either to widow or child, appointment of complete outsider as administrator was not justified, even though widow had failed in earlier proceeding to establish documents proffered by her as decedent's will and was seeking to charge estate with expenses of that proceeding and relations between widow and decedent's child were strained. *P. G. Brooks v. W. C. De Lacy etc* (1958, 103 U.S. App. D.C. 223, 257 F. 2d 227)

CAVEAT

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 92 U. S. App. D. C. 145, 204 F. 2d 38).

WIDOW'S PREFERENCE

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

§ 20-205 [29: 105]. Persons entitled to administer—Grandchild.

NOTES TO DECISIONS

WIDOW'S PREFERENCE

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

§ 20-207 [29: 107]. Persons entitled to administer—Brothers and sisters.

NOTES TO DECISIONS

DISCRETION OF COURT

Under District of Columbia statutes relating to appointment of administrator of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences,

but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

§ 20-216 [29: 116]. Persons entitled to administer—Creditors.

NOTES TO DECISIONS

DISCRETION OF COURT

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Corinne B. Randall v. Grace Fitzpatrick Bockhorst* (1956, 98 U. S. App. D. C. 77, 232 F. 2d 334).

DISQUALIFICATION MANDATORY

District of Columbia Code provision prohibiting granting of letters testamentary or of administration to person convicted of infamous crime is not discretionary, and if such disqualification is discovered after letters have been issued appointment should be revoked. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189)

FRAUD IN SECURING APPOINTMENT

If trial court found that administrator had perpetrated fraud in securing appointment, trial court should exercise its discretion to determine whether fraud was a sound reason for it to depart from statutory scheme in designating administrator. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189)

GROUND FOR REMOVAL

In proceeding on petition for removal of administrator on ground that he had been convicted of an infamous crime, order refusing removal must be vacated and set aside in order that there could be an express judicial finding made as to whether administrator had been convicted as alleged, and order entered for his removal if finding was against him on that issue. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189)

STATUTORY SCHEME

Under District of Columbia statute setting forth scheme as to who shall be appointed administrator, court may in its discretion depart from the statutory scheme where there is a sound reason to do so. *G. J. Dial v. C. W. Johnson, Administrator etc.* (1958, 104 U.S. App. D.C. 32, 259 F. 2d 189)

Chapter 3.—EXECUTORS

§ 20-303 [29: 133]. Special bond.

NOTES TO DECISIONS

EXECUTOR'S SPECIAL UNDERTAKING

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Robert H. McNeill and T. Bruce Fuller v. Maude Selby Jamison and Glen Falls Ind. Co.* (D. C. Mun. App. 1955, 116 A. 2d 160).

§ 20-306 [29:136]. Absent executor—Summons—Notice.

NOTES TO DECISIONS

CLAIM IN PROCESS OF ADMINISTRATION

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in

process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (188 F. 2d 633, 88 U. S. App. D. C. 166, certiorari denied 341 U. S. 926, 71 S. Ct. 797.)

Chapter 4.—COLLECTORS.

§ 20-401 [29: 151]. Letters ad colligendum.

NOTES TO DECISIONS

APPOINTMENT

Where judgment creditor, who had become resident and domiciliary of Virginia, died in Virginia while appeal from such judgment was pending, and person named as executor in judgment creditor's purported will had filed such will with clerk of court in Virginia but had not taken further proceedings thereunder, the district court should have appointed a collector of assets of estate of judgment creditor. *Belt v. Lynn* (1954, 94 U. S. App. D. C. 1, 211 F. 2d 431).

§ 20-404 [29: 154]. When powers to cease.

NOTES TO DECISIONS

ACTION COMMENCED BY COLLECTOR

Upon granting of letters testamentary or of administration, power of collector of assets of estate of judgment creditor would cease, and executor or administrator could be permitted to prosecute any action commenced by collector. *Belt v. Lynn* (1954, 94 U. S. App. D. C. 1, 211 F. 2d 431).

Chapter 5.—SUITS

§ 20-501 [29: 251]. Suits by and against executors or administrators.

NOTES TO DECISIONS

RES JUDICATA

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison v. Garrett* (1953, 92 U. S. App. D. C. 232, 205 F. 2d 15).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

Chapter 6.—ACCOUNTS

§ 20-601 [29: 261]. First account within twelve months.

NOTES TO DECISIONS

CLAIM IN PROCESS OF ADMINISTRATION

The statute reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where statute was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 188 F. 2d 633, certiorari denied 341 U. S. 926, 71 S. Ct. 797, 88 U. S. App. D. C. 166).

§ 20-605 [29: 265]. Disbursements and allowances.

On the other side shall be stated the disbursements by him made, namely: **First.** Funeral expenses, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not exceeding six hundred dollars: *Provided*, That for special cause shown the court may make such additional allowance not exceeding four hundred dollars as such special circumstances may warrant. **Second.** The debts of the deceased proved or passed as herein directed, and paid or retained. **Third.** The allowance for things lost, or which have perished without the party's fault, which allowance shall be according to the appraisement. **Fourth.** His com-

missions, which shall be at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventory or inventories, excluding what is lost or perished. **Fifth.** His allowance for costs, attorneys' fees, and extraordinary expenses which the court may think proper to allow. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 365; June 30, 1902, 32 Stat. 529, ch. 1329; August 1, 1953, 67 Stat. 358, ch. 308, § 1.)

AMENDMENTS

1953—Act of August 1, 1953, amended the section so as to provide for a maximum priority allowance of \$600 for funeral expenses, and to increase the maximum statutory allowance to \$1000.

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

Chap.	Sec.
5. Conservators.....	21-501

Chapter 1.—INFANTS AND OTHER INCOMPETENTS

Sec.	
21-121a.	Settlement of actions involving minor children, subject to court approval—Appointment of Guardian necessary where proceeds of settlement exceeds \$3,000.

§ 21-101 [15: 31]. Natural guardians.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *L. F. Bell et al. v. G. H. Leonard; A. Bell and L. V. Bell v. G. H. Leonard* (1958, 102 U. S. App. D. C. 179, 251 F. 2d 890).

§ 21-121a. Settlement of actions involving minor children, subject to court approval—Appointment of Guardian necessary where proceeds of settlement exceeds \$3,000.

(1) Any person entitled to maintain or defend an action in behalf of a minor child, including actions relating to real estate, shall be competent to settle or compromise any action so brought and, upon settlement or compromise thereof or upon satisfaction of any judgment obtained therein, shall be competent to give a full acquittance and release of all liability in connection with such action, but no such settlement or compromise shall be valid unless the same shall be approved by a judge of the court in which such action is pending.

(2) Before any person shall receive any money or other property on behalf of a minor in settlement or compromise of any action brought on behalf of or against such minor or in satisfaction of any judgment in any such action, where (after deduction of fees, costs and all other expenses incident to the matter) the net value of said money and property due the minor exceeds \$3,000, such person shall be duly appointed by a court of competent jurisdiction as guardian of the estate of such minor to receive such money or property, and shall have qualified as such. (Sept. 14, 1959, 73 Stat. 553, Pub. L. 86-268, § 1(153A).)

§ 21-126 [15: 55]. Accounts—Maintenance and education—Sales—Compensation.

NOTES TO DECISIONS

COMPENSATION OF CONSERVATOR

In view of facts that duties of conservator and guardian are basically the same, and that District of Columbia Code providing for appointment of conservators is silent as to compensation of conservators and merely provides

that conservators shall have same rights and powers as guardians and that court shall have the same powers with respect to property of any person for whom conservator has been appointed as it has with respect to property of infants under guardianships, compensation of conservator should be fixed under statute limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Searle* (1953, 118 F. Supp. 273).

COMPENSATION OF TEMPORARY CONSERVATOR

Compensation of temporary conservator would not be determined under District of Columbia Code provision fixing compensation of guardian but would be determined by considering the character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (1953, 118 F. Supp. 273).

Chapter 2.—PROPERTY OF INFANTS AND PERSONS NON COMPOS MENTIS

Sec.	
21-214.	Gifts of securities to minors in District—Registration—Delivery—Deed of gift.
21-215.	Gift irrevocable—Rights and duties of guardian.
21-216.	Management of gift property by custodian—Rights, powers and duties of custodian
21-217.	Custodian not to receive compensation for services—Reimbursement for expenses.
21-218.	Bond—Liability of custodian
21-219.	Resignation—Steps required to complete resignation.
21-220.	Death or incapacity of custodian—Appointment of successor
21-221.	Rights, powers and duties of successor custodian.
21-222.	Action against custodian for accounting
21-223.	Definitions.
21-224.	Method for making gifts of securities not exclusive.

§ 21-211 [15: 71]. Lease of infant's estate—Where consent necessary.

NOTES TO DECISIONS

ASSIGNMENT OF CONTRACT

Assignment of an existing lease is not a "demise" within statute providing for court approval of any demise of an infant's real estate. *Sweeney v. Jacobsen* (1952, 103 F Supp. 393)

§ 21-214. Gifts of securities to minors in District—Registration—Delivery—Deed of gift.

(a) With respect to the District of Columbia, any adult person may make a gift of securities to a person who has not attained the age of 21 years on the date of the gift (hereinafter referred to as the "minor") in the following manner:

(1) Securities, if in registered form, shall be registered by the donor in his own name or in the name of any adult member of the minor's family or in the name of any guardian of the minor, followed by the words "as custodian, for

(Name of minor)

a minor, under the laws of the District of Columbia", and the securities shall be delivered to the person in whose name they are thus registered as custodian.

If the securities are thus registered in the name of the donor as custodian such registration shall of itself constitute the delivery required by this section.

(2) Securities, if in bearer form, shall be delivered by the donor to any adult member of the minor's family, other than the donor, or to any guardian of the minor, accompanied by a deed of gift duly acknowledged in substantially the following form, signed by the donor and the person designated therein as custodian:

DEED OF GIFT UNDER THE LAWS OF THE DISTRICT OF COLUMBIA

I, _____ do hereby deliver to
(Name of donor)
_____, as custodian for
(Name of custodian)
_____, a minor, under the
(Name of minor)
laws of the District of Columbia, the following security(ies): Principal amount \$_____,
of the _____
(Description of security)
Serial number of security _____
or
Certificate No. _____, representing
_____ shares of the _____
(Class or type of stock)
stock of _____
(Name of company)

(Signature of donor)

I, _____, do hereby
(Name of custodian)
acknowledge receipt of the above described security(ies).

(Signature of custodian)

Dated: _____

(b) The person designated as a custodian under this section is hereinafter called "the custodian". (Aug. 3, 1956, 70 Stat. 1028, ch. 947, § 1.)

§ 21-215. Gift irrevocable—Rights and duties of guardian.

A gift made in the manner prescribed in section 21-214 shall be irrevocable and shall convey to the minor indefeasibly vested legal title to the securities thus delivered, but no guardian of the person or property of the minor shall have any rights, duties or authority with respect to any property held at any time by the custodian under the authority of sections 21-214 to 21-224 unless said guardian shall himself be or become custodian in accordance herewith. (Aug. 3, 1956, 70 Stat. 1028, ch. 947, § 2.)

§ 21-216. Management of gift property by custodian—Rights, powers and duties of custodian.

(a) The custodian shall hold, manage, invest and reinvest the property held by him as custodian, including any unexpended income therefrom, as hereinafter provided. He shall collect the income therefrom and apply so much or the whole thereof and so much or the whole of the other property held by

him as custodian as he may deem advisable for the support, maintenance, education and general use and benefit of the minor, in such manner, at such time or times, and to such extent as the custodian in his absolute discretion may deem suitable and proper, without court order, without regard to the duty of any person to support the minor and without regard to any other funds which may be applicable or available for the purpose. To the extent that property held by the custodian and the income thereof is not so expended, it shall be delivered or paid over to the minor upon the minor's attaining the age of twenty-one years, and in the event that the minor dies before attaining the age of twenty-one years it shall thereupon be delivered or paid over to the estate of the minor.

(b) The custodian may sell, exchange, convert, or otherwise dispose of any and all of the securities or other property held by him in such manner and at such time or times, for such prices and upon such terms as he may deem advisable; he shall have the power in his sole and absolute discretion to retain any and all securities delivered to him within the meaning and under the authority of sections 21-214 to 21-224 without reference to the statutes relating to permissible investments by fiduciaries; he shall invest the minor's property in such securities as would be acquired by prudent men of discretion and intelligence who are seeking a reasonable income and the preservation of their capital without reference to the statutes relating to permissible investments by fiduciaries or hold part or all of the same in one or more bank accounts in his name as such custodian; he may vote in person or by general or limited proxy with respect to any securities held by him; he may consent directly or through a committee or other agent to the reorganization, consolidation, dissolution or liquidation of any corporations, the securities of which may be held by him, or to the sale, lease, pledge or mortgage of any property by or to any such corporation.

(c) In addition to the foregoing rights, powers, and duties with respect to any securities or other property held by the custodian, the custodian, in his name as such custodian, shall have all the powers of management which a guardian of the property of the minor would have.

(d) The custodian may execute and deliver any and all instruments in writing which he may deem advisable to carry out any of the foregoing powers. No issuer of securities, transfer agent, registrar, or bank, or other person acting on the instructions of any person purporting to be a custodian or donor, shall be responsible for determining whether any person has been duly designated as a custodian under sections 21-214 to 21-224, or whether any purchase, sale, or transfer to or by any person as custodian is in accordance with or authorized by sections 21-214 to 21-224, or shall be obliged to inquire into the validity under sections 21-214 to 21-224 of any instrument or instructions executed or given by a person purporting to act as custodian or donor, or be bound to see to the application by any person purporting to act as custodian of any money

or other property paid or delivered to him. All registered securities held by the custodian from time to time shall be registered in his name followed by the words "as custodian for

(Name of minor)

a minor under the laws of the District of Columbia". All other property held by the custodian for the minor under the authority of sections 21-214 to 21-224 shall be kept separate and distinct from the custodian's own personal funds and property and shall be maintained at all times in such a manner as to identify it clearly as the minor's property held by the custodian under the authority of sections 21-214 to 21-224. (Aug. 3, 1956, 70 Stat. 1029, ch. 947, § 3.)

§ 21-217. Custodian not to receive compensation for services—Reimbursement for expenses.

A person acting as custodian, other than a guardian of the property of the minor, shall receive no compensation for his services but shall be entitled to reimbursement from the property held by him as custodian for the reasonable expenses incurred in the performance of his duties hereunder. A guardian of the property of the minor, when acting as custodian under the authority of sections 21-214 to 21-224, may receive such additional compensation for his services as guardian as he would be entitled to receive if the property held by him as custodian hereunder were held by him in his capacity as guardian, in addition to the other property of the minor held by him in that capacity. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 4.)

§ 21-218. Bond—Liability of custodian.

A custodian who is not compensated for acting as such shall be under no obligation to give bond for the faithful performance of his duties and shall not be liable for any losses to the property held by him except such as are the result of his bad faith or intentional wrongdoing or result from his investing the minor's property in a manner other than as prescribed in section 21-216 (b). (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 5.)

§ 21-219. Resignation—Steps required to complete resignation.

A custodian may resign by (1) executing and duly acknowledging an instrument of resignation designating a successor custodian who is an adult member of the minor's family or a guardian of the minor, (2) delivering such instrument to the successor custodian, (3) causing securities, if in registered form, to be registered in the name of the successor custodian as such, and (4) delivering to the successor custodian such securities so registered together with all other property held by him as custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 6.)

§ 21-220. Death or incapacity of custodian—Appointment of successor.

In the event of the death or incapacity of the custodian before the minor attains the age of twenty-one years, if there is a duly appointed and acting

general guardian of the property of the minor at the time of such death or incapacity of the custodian, he shall become the successor custodian, but if there is no duly appointed and acting general guardian of the property of the minor at said time, the successor custodian shall be the adult member of the minor's family or a guardian of the minor, designated by will or duly acknowledged instrument of appointment executed by the last acting custodian. If no such designation is made by the last acting custodian, his legal representative may designate in writing an adult member of the minor's family or a guardian of the minor a successor custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 7.)

§ 21-221. Rights, powers and duties of successor custodian.

Any successor custodian shall have all the rights, powers and duties of a custodian under the authority of sections 21-214 to 21-224. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 8.)

§ 21-222. Action against custodian for accounting.

The next friend or legal representative of a minor, in whose behalf securities are held by a custodian under sections 21-214 to 21-224, or the minor in his own right, no later than one year after reaching twenty-one years of age, shall be entitled to maintain an action in the United States District Court for the District of Columbia against such custodian, or his estate for an accounting and delivery of the securities and unexpended income, in the event of the death, inability, or neglect to act of such custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 9.)

§ 21-223. Definitions.

(a) The term "security" as used in sections 21-214 to 21-224 means any note, stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, certificate of deposit for a security or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing.

(b) A security is in "registered form" when its terms specify a person entitled to the security or to the rights it evidences and specify that its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer.

(c) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

(d) The term "member of the minor's family" as used in sections 21-214 to 21-224 means the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(e) The term "legal representative" as used in sections 21-214 to 21-224 means, as may be appropriate in the circumstances, the executor, administrator, general guardian, or committee (conservator) of the property of the person to whose legal representative reference is made.

(f) A gift made under authority of sections 21-214 to 21-224 to a guardian of the minor as custodian shall be deemed to have satisfied the requirements of the sections if the person to whom delivery has been made is either guardian of the person or guardian of the property of the minor, duly appointed in the District of Columbia or in the State, Territory or country where the minor was domiciled at the time of the delivery of the gift. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 10.)

§ 21-224. Method for making gifts of securities not exclusive.

Sections 21-214 to 21-224 shall not be construed as providing an exclusive method for making gifts of securities to minors. (Aug. 3, 1956, 70 Stat. 1031, ch. 947, § 11.)

Chapter 3.—INSANE PERSONS, INQUESTS

§ 21-301 [16:2]. Estates of lunatics — Accounting—Compensation—Dower.

NOTES TO DECISIONS

ALLEGATIONS OF PETITION

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

FUNCTIONS OF COMMITTEE

Under law of District of Columbia, committee of an incompetent is the mere conservator of the ward's estate and his authority is mainly ministerial or administrative. *In re Estate of Minnie B. Church, Deceased* (1956, 141 F. Supp. 703).

Under law of District of Columbia, committee of an incompetent cannot, without authority of the court which appointed him, exercise a right which is personal to the incompetent or perform an act which is contrary to the incompetent's intentions expressed before his disability. *Id.*

District of Columbia statute conferring on equity court full power and authority to superintend and direct affairs of persons non compos mentis, implies that any discretionary power of committee of an incompetent must be exercised under supervision of the appointing court. *Id.*

PROCEDURAL REQUIREMENTS APPLY TO ALL PERSONS

Procedural requirements of civil insanity statute were enacted by Congress for protection of all persons alleged to be insane in civil proceedings, and those statutory safeguards are not to be withheld from those with criminal records. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

PROCEDURE FOR COMMITMENT

Statute dealing with court's power to superintend and direct affairs of persons who have been adjudged non compos mentis provides no procedure for commitment of insane persons. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

PROPERTY RIGHTS OF SURVIVING CO-OWNER

Where one purchased United States Savings Bonds in her own name and in name of her son as co-owners, and mother then became incompetent and her committee unnecessarily redeemed bonds without authorization of court or notice to co-owner son, and mother then died, son was entitled to substituted bearer bonds or to whatever funds could be traced to bearer bonds which existed at time of mother's death. *In re Estate of Minnie B. Church, Deceased* (1956, 141 F. Supp. 703).

REIMBURSEMENT

Under 1939 act providing for commitment of insane person and that committee of such person, if estate is sufficient for purpose, shall pay cost to District of Columbia for maintenance, and that, if it appears that insane person has not sufficient estate out of which his maintenance may "properly" be fully met, then court may order payment by relatives of such sum necessary to provide for maintenance, the word "properly" does not refer to adequacy of estate after making allowance for support of dependents, but refers to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court may seem proper, and hence act does not give authority to fix payments by committee at less than full cost of care where funds of estate are adequate. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

§ 21-306 [16:18]. Proceedings to determine mental condition.

NOTES TO DECISIONS

COMMITMENT PROCEDURE

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *D. O. Williams v. W. Overholser, Sup't etc.*, (1958, 104 U.S. App. D.C. 18, 259 F. 2d 175).

HABEAS CORPUS

Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *D. O. Williams v. W. Overholser, Sup't etc.* (1958, 104 U.S. App. D.C. 18, 259 F. 2d 175).

RIGHT TO COUNSEL

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

VOID PROCEEDING

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

§ 21-307 [16:19]. Repealed June 8, 1938, 52 Stat. 631, ch. 326, § 16.

COMPILER'S NOTE

See, however, footnote in *District of Columbia v. Reilly Committee etc.*, 249 F. 2d 524, wherein the Court ex-

presses doubt as to the correctness of the annotation to the effect that the section is repealed.

Section relating to jury in lunacy proceedings; appointment of committee or trustee; cost and expense of maintenance and payment is now covered by §§ 21-301, 21-313, 21-318, and 21-319.

NOTES TO DECISIONS

CLAIM AGAINST VETERANS' COMMITTEE

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. *District of Columbia v. Reilly etc.* (1957, 102 U. S. App. D. C. 9, 249 F. 2d 524).

REIMBURSEMENT

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District would be entitled to judgment for entire balance and to be paid its pro rata share out of proceeds of estate on same basis as any other creditor. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

§ 21-308 [16: 42]. Commission on Mental Health.

NOTES TO DECISIONS

OBITER DICTUM

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could have been found to be invalid for lack of representation in court alone. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

REPRESENTATION MANDATORY

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

RIGHT TO COUNSEL

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

VOID PROCEEDING

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

§ 21-310 [16: 58]. Insanity proceedings—Application for writ de lunatico inquirendo, and for observation.

NOTES TO DECISIONS

CONSTRUCTION OF STATUTES

Code section providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly those sections implementing procedure initiated under that section. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

SUFFICIENCY OF PETITION

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with statute permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. D. O. Williams* (1958, 102 U. S. App. D. C. 248, 252 F. 2d 629).

§ 21-311 [16: 59]. Issuance of attachment—Examination.

NOTES TO DECISIONS

CONSTRUCTION OF STATUTES

Code section providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly those sections implementing procedure initiated under that section. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

COSTS AND ATTORNEY'S FEES

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (1950, 93 F. Supp. 641).

Petitioner for writ de lunatico inquirendi was not required to rely on corporation counsel but could secure counsel of own choice. *Id.*

GROUND FOR COMMITMENT

No District of Columbia statute or inherent equity power permits commitment to institution upon mere showing that man is potentially dangerous to others. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

INTERIM DETENTION

Where police officer had woman, who cut her wrist taken to hospital where she was placed in psychiatric ward, on ground that she had attempted suicide, doctors at hospital were not civilly liable in false imprisonment action for interim detention of woman prior to receipt of court order. *Orvis v. Brickman* (1952, 90 U. S. App. D. C. 266, 196 F. 2d 762).

OBITER DICTUM

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could be found to be invalid for lack of representation in court alone. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

REPRESENTATION MANDATORY

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always

be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

RIGHT TO COUNSEL

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

SUFFICIENCY OF PETITION

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with statute permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. D. O. Williams* (1958, 102 U. S. App. D. C. 248, 252 F. 2d 629).

VOID PROCEEDING

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

§ 21-312 [16: 60]. Report to be served—Demand for jury trial—Trial.

NOTES TO DECISIONS

COSTS AND ATTORNEY'S FEES

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (1950, 93 F. Supp. 641).

§ 21-314 [16: 62]. Procedure if no jury trial demanded.

NOTES TO DECISIONS

OBITER DICTUM

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could have been found to be invalid for lack of representation in court alone. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

REPRESENTATION MANDATORY

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 100 U. S. App. D. C. 247, 243 F. 2d 825).

§ 21-317 [16: 65]. Transfer of nonresident insane—Confinement of residents—Custody of harmless insane.

NOTES TO DECISIONS

PRINCIPAL PLACE OF ABODE

The phrase "principal place of abode" as used in mental health statute providing that a resident of the District of Columbia, as used in such statute, means a person who has maintained his principal place of abode in the District of Columbia for more than one year prior to filing of petition for commitment, does not require physical presence. *District of Columbia v. Stackhouse* (1956, 99 U. S. App. D. C. 242, 239 F. 2d 62).

Where defendant, who was committed to a hospital as an insane person, had her residence in the District of Columbia during her childhood, her subsequent confinement in numerous mental institutions did not effect a change in her residence, nor did the fact that she lived in college towns as a student, during which times she returned home for summer vacations, result in the loss of her District of Columbia residence. *Id.*

PROCEDURE

Where a motion to amend findings of fact and a decree of adjudication and commitment as a person of unsound mind was made eight months after entry of such order, relief from part of judgment ruling that defendant was not a resident of the District of Columbia could be granted by court under rule providing for relief from judgment or order by a court, rather than under rule providing that motions to amend findings of fact must be made not later than ten days after entry of judgment. *District of Columbia v. Stackhouse* (1956, 99 U. S. App. D. C. 242, 239 F. 2d 62).

§ 21-318 [16: 66]. Liability of relatives for costs of maintenance and treatment.

NOTES TO DECISIONS

CLAIM AGAINST VETERANS' COMMITTEE

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. *District of Columbia v. Reilly etc.* (1957, 102 U. S. App. D. C. 9, 249 F. 2d 524).

REIMBURSEMENT, COMPUTATION OF

In committing insane person to hospital and appointing committee of his person and estate and in fixing amount of payments to District of Columbia on account of cost of care of insane person to be made out of insane person's estate, there is no authority to consider support of dependents. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

Where insane person was committed to hospital and committee appointed of his person and estate, and committee was ordered to pay certain sum to District of Columbia for hospital care, which sum was less than actual cost because of need of support of insane person's wife, upon insane person's death, estate was liable for portion of cost of care for which District had not been reimbursed, and in rendering judgment for unpaid balance District Court had no authority to consider need of deceased insane person's dependents for support. *Id.*

Under 1939 act providing for commitment of insane person and that committee of such person, if estate is sufficient for purpose, shall pay cost to District of Columbia for maintenance, and that, if it appears that insane person has not sufficient estate out of which his maintenance may "properly" be fully met, then court may order payment by relatives of such sum necessary to provide for maintenance, the word "properly" does not refer to adequacy of estate after making allowance for support of dependents, but refers to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court may seem proper, and hence act does not give authority to fix payments by committee at less than full cost of care where funds of estate are adequate. *Id.*

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District of Columbia would be entitled to judgment for entire balance and to be paid its pro rata share of proceeds of estate on same basis as any other creditor. *Id.*

District of Columbia Code section giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by 1939 act which provides in terms for repeal of inconsistent statutes and which does not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *Id.*

§ 21-319 [16: 15]. Insane persons having property—Inquiry by board—Charge for care.

NOTES TO DECISIONS

REIMBURSEMENT, COMPUTATION OF

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District would be entitled to judgment for entire balance and to be paid its pro rata share out of proceeds of estate on same basis as any other creditor. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

In committing insane person to hospital and appointing committee of his person and estate and in fixing amount of payments to District of Columbia on account of cost of care of insane person to be made out of insane person's estate, there is no authority to consider support of dependents. *Id.*

Where insane person was committed to hospital and committee appointed of his person and estate, and committee was ordered to pay certain sum to District of Columbia for hospital care, which sum was less than actual cost because of need of support of insane person's wife, upon insane person's death, estate was liable for portion of cost of care for which District had not been reimbursed, and in rendering judgment for unpaid balance District Court had no authority to consider need of deceased insane person's dependents for support. *Id.*

District of Columbia Code section giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by 1939 act which provides in terms for repeal of inconsistent statutes and which does not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *Id.*

§ 21-326 [16: 31]. Apprehension and detention by police, without warrant, of insane persons found in public places.

NOTES TO DECISIONS

ALLEGATIONS OF PETITION

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

CONSTRUCTION OF STATUTES

Code section providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly those sections implementing procedure initiated under that section. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

GROUND'S FOR APPREHENSION

Statute providing emergency procedure for apprehension of persons thought to be insane should not be defeated by over-technical construction, but it does require that arresting officer reasonably believe that person apprehended is insane and incapable of managing his own affairs or that he is a menace to public peace; and such statute authorizes only initial arrest and detention. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871).

SUFFICIENCY OF PETITION

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with statute permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. D. O. Williams* (1958, 102 U. S. App. D. C. 248, 252 F. 2d 629).

§ 21-328 [16: 33]. Repealed June 8, 1938, 52 Stat. 631, ch. 326, § 16.

Section, the act of April 27, 1904, 33 Stat. 317, ch. 1618, § 3, as amended July 1, 1916, 39 Stat. 309, ch. 209, § 1, relating to the temporary detention of alleged insane persons which is now covered by § 21-311.

§ 21-329 [16: 34]. Repealed June 8, 1938, 52 Stat. 631, ch. 326, § 16.

Section, the act of April 27, 1904, 33 Stat. 317, ch. 1618, § 4, as amended July 1, 1916, 39 Stat. 309, ch. 209, relating to temporary commitment of persons to other hospital; detention in police station; and discharge of person certified not insane which are now covered by § 21-311.

§ 21-330 [16: 35]. Certificate by physician as to sanity or insanity—Qualifications of physician.

For the purpose of this chapter no certificate as to the sanity or the insanity of any person shall be valid which has been issued (a) by a physician who has not been regularly licensed to practice medicine in the District of Columbia, unless he be a commissioned surgeon of the United States Army, Navy, Air Force, or Public Health Service, or a physician employed by the Veterans' Administration; or (b) by a physician who is related by blood or by marriage to the person whose mental condition is in question. No certificate alleging the insanity of any person shall be valid, which has been issued by a physician who is financially interested in the hospital or asylum in which the alleged insane person is to be confined; nor, except in the case of physicians employed by the United States or the District of Columbia, shall any such certificate be valid which has been issued by a physician who is professionally or officially connected with such hospital or asylum. (As amended Aug. 1, 1951, ch. 282, § 1.)

AMENDMENTS

1951—The act of Aug. 1, 1951, amended the section by adding the reference to a physician employed by the Veterans' Administration in subsection (a) and by deleting former subsections (b) and (c) which provided: "or (b) by a physician who is not a permanent resident of the District of Columbia; or (c) by a physician who has not been actively engaged in the practice of his profession for at least three years." Other changes in phraseology were made.

§ 21-331 [16: 331]. Repealed June 8, 1938, 52 Stat. 631, ch. 326, § 16.

Section, the act of April 27, 1904, 33 Stat. 318, ch. 1618, § 8, relating to penalty for making false affidavit or certificate now covered by § 21-324.

Chapter 5.—CONSERVATORS

Sec.

21-501. Appointment of conservators.

21-502. Filing of petition—Requirements—Time and place of hearing—Appointment of guardian ad litem.

21-503. Powers and duties of conservator.

21-504. Application for discharge—Powers of court.

21-505. Appointment of temporary conservator.

21-506. Personal welfare of person under conservatorship—Responsibility.

21-507. Lis pendens.

§ 21-501. Appointment of conservators.

If an adult person residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness (not amounting to unsoundness of mind), or physical incapacity properly to care for his property, the United States District Court for the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint some fit person to be conservator of his property. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 1.)

§ 21-502. Filing of petition—Requirements—Time and place of hearing—Appointment of guardian ad litem.

Upon the filing of such petition, the court shall fix a time and place for a hearing thereon; and shall cause at least fourteen days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court shall direct. The petition shall include, among other things—

(1) the reasons for the appointment of a conservator;

(2) the name and address of the person for whom the conservator is sought;

(3) the date and place of his birth, if known; and

(4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

The court in its discretion may appoint some disinterested person to act as guardian ad litem in any proceeding hereunder. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of such person subject to the direction of the court. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 2.)

NOTES TO DECISIONS

DISCRETION OF COURT

Under statute providing for appointment of a guardian ad litem in a proceeding to have a conservator appointed, selection and supervision of guardian ad litem are matters within sound discretion of trial court. *Louis B. Mazza v. Clarence G. Pechacek, Guardian ad litem, etc.* (1956, 98 U. S. App. D. C. 175, 233 F. 2d 666).

SELECTION OF PRIVATE COUNSEL

Person for whose estate appointment of a conservator is sought may select private counsel of his own choice to advocate his position in opposition to appointment of a conservator. *Louis B. Mazza v. Clarence G. Pechacek, Guardian ad litem, etc.* (1956, 98 U. S. App. D. C. 175, 233 F. 2d 666).

§ 21-503. Powers and duties of conservator.

Such conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such maximum amount as the court may order, conditioned on the faithful performance of his duties as such conservator; and he shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due such person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and such part of the principal of the estate of such person as the court may authorize to the support of such person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of such person as have guardians of the estates of infants. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 3.)

NOTES TO DECISIONS

COMPENSATION

In view of facts that duties of conservator and guardian are basically the same, and that District of Columbia Code providing for appointment of conservators is silent as to compensation of conservators and merely provides that conservators shall have same rights and powers as guardians and that court shall have the same powers with respect to property of any person for whom conservator has been appointed as it has with respect to property of infants under guardianships, compensation of conservator should be fixed under statute limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Searle* (1953, 118 F. Supp. 273).

§ 21-504. Application for discharge—Powers of court.

When any person for whom a conservator has been appointed under the provisions of this chapter shall become competent to manage his property, he may apply to such court to have such conservator discharged and to be restored to the care and control of his property. If the court finds him to be competent, an order shall be entered restoring the care and control of his property to such person. The court shall have the same powers with respect to the property of any person for whom a conservator has been appointed as it has with respect to the property of infants under guardianships. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 4.)

§ 21-505. Appointment of temporary conservator.

Upon filing of a petition as provided by this chapter the court may, with or without notice or hearing, appoint a temporary conservator of the estate of any person hereunder, if it deems such action necessary for the protection of such estate, subject to the provisions for an undertaking contained in section 21-503. Such temporary conservator shall serve only until such time as a permanent conservator can be appointed or until sooner discharged. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 5.)

NOTES TO DECISIONS

COMPENSATION OF TEMPORARY CONSERVATOR

Compensation of temporary conservator would not be determined under District of Columbia Code provision fixing compensation of guardian but would be determined by considering the character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (1953, 118 F. Supp. 273).

§ 21-506. Personal welfare of person under conservatorship—Responsibility.

The court, in its discretion, may at any time order that the conservator or some other person shall be responsible for the personal welfare of the person whose property is under conservatorship. In such event the conservator or such other person, subject to the direction and control of the Civil Division of

the court, shall have the same powers and duties with respect to the personal welfare of the said person as have the guardians of the persons of infants under guardianships. (Oct. 24, 1951, 65 Stat. 609, ch. 545, § 6.)

§ 21-507. Lis pendens.

Lis pendens: Upon the filing of a petition under this chapter, a certified copy of such petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator be appointed on such petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after such filing and before the termination of the conservatorship shall be void. (Oct. 24, 1951, 65 Stat. 609, ch. 545, § 7.)

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22.—CRIMINAL OFFENSES

Chap.	Sec.
16. Game and fish laws.....	22-1628

Chapter 1.—GENERAL PROVISIONS

§ 22-103 [6: 3]. Attempts to commit crime.

NOTES TO DECISIONS

ATTEMPT

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Id.*

EVIDENCE

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

SUFFICIENCY OF EVIDENCE

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendants' guilt was sufficient for the jury. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

§ 22-105 [6: 5]. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

AID AND ABET

Public utilities commission regulation, forbidding owner or operator of vehicle for hire to authorize any person to operate such vehicle unless such person possessed a valid character license, was directed only to owners and operators who permitted unlicensed persons to drive; and defendant, who had an arrangement with corporation to rent taxicabs or to provide drivers but did not himself operate taxicabs and had no proprietary interest in corporation or its vehicles, could not properly be convicted under statute, where he was not accused of aiding and abetting corporation, and evidence did not comport with that of a case tried on theory of aiding and abetting. *J. E. Sellers v. District of Columbia* (D. C. Mun. App. 1958, 143 A. 2d 96).

The District of Columbia vehicle title and registration regulations and the commissioners' order concerning automobile conditional sales contracts were applicable only to licensed automobile dealers, and unlicensed dealer, even though he aided and abetted a licensed dealer, could not be convicted for violations of regulations and order on the sole basis that he was a dealer under their purview. *Jack Berman Inc., et al. v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 147).

Although an offense may be so defined by statute or regulation that it can only be committed by members of a certain class, one outside the class may, by aiding or abetting another who is within the scope of the definition, render himself criminally liable for the offense. *Id.*

Under statute, although one may not be the principal actor, he may be charged as a principal under the same information in conjunction with principal offender for acts of aiding and abetting. *Id.*

Defendant who aided and abetted the taking of an automobile and other property within the District of Columbia was liable as a principal. *Williams v. United States* (1954, 94 U. S. App. D. C. 219, 215 F. 2d 35).

AIDING AND ABETTING

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *C. R. Allen v. United States* (1958, 103 U.S. App. D.C. 184, 257 F. 2d 188).

EVIDENCE

Evidence was sufficient to establish defendant's guilty participation in crime of housebreaking and larceny. *Lanham v. United States* (1950, 87 U. S. App. D. C. 357, 185 F. 2d 435).

INSTRUCTIONS

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, jury, in determining whether the killing by defendant's companion was within design or plan of defendant and his companion, was entitled to consider whether it was a natural and probable result of the acts which defendant and his companion concerted to perform. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

INSTRUCTIONS TO JURY

Defendants were not entitled to complain that the trial court erroneously failed to tell the jury that a defendant was an accomplice rather than a principal where the trial judge gave instructions which were full and correct and reflected the statutory provision that all who aid or abet in the commission of a crime are charged as principals. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

INTENT

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own intent. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

§ 22-109 [6: 296]. Prosecutions.

All prosecutions for violations of section 22-1121 or any of the provisions of sections 22-1107 to 22-1110, 22-1112 to 22-1114, 22-1117, 22-1118, 22-2701, 22-3110 to 22-3113, 22-3301 shall be conducted in

the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of section 22-1121 or any of the provisions of sections 22-1107 to 22-1110, 22-1112 to 22-1114, 22-1117, 22-1118, 22-2701, 22-3110 to 22-3113, 22-3301, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse of the District of Columbia for a term not exceeding six months for each and every offense. The second sentence of this section shall not apply with respect to any violation of section 22-1112 (b). (July 29, 1892, 27 Stat. 325, ch. 320, § 18; June 29, 1953, 67 Stat. 93, ch. 159, §§ 202, 211.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding the references to section 22-1121 (section 211 of the District of Columbia Law Enforcement Act of 1953) to the first and second sentences. The section was further amended by the addition of the last sentence which excepted application of the section to a violation of section 22-1112 (b) which contains other penalty provisions.

COMPILER'S NOTE

§ 22-2701 referred to in text is based upon section 1 of the act of August 15, 1935, 49 Stat. 651; section 4 of which expressly repealed similar provisions in section 7 of the 1892 act cited to text.

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

- "(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;
- "(2) The term 'district court' means the United States District Court for the District of Columbia;
- "(3) The term 'United States attorney' means the United States attorney for the District of Columbia;
- "(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and
- "(5) The term 'District' means the District of Columbia."

Chapter 2.—ABORTION

§ 22-201 [6: 33]. Definition and penalty.

Whoever, by means of any instrument, medicine, drug or other means whatever, procures or produces, or attempts to procure or produce an abortion or miscarriage on any woman, unless the same were done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned in the penitentiary not less than one year or not more than ten years; or if the death of the mother results therefrom, the person procuring or producing, or attempting to procure or produce the abortion or miscarriage shall be guilty of second degree murder. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 809; June 29, 1953, 67 Stat. 93, ch. 159, § 203.)

AMENDMENTS

1953—Act of June 29, 1953, amended the section by replacing previous language with the present revised language, and providing that the penalty for the offense would be imprisonment for from one to ten years in lieu of the previous provision of "not more than five years"; and also providing that in the event of death, the person procuring the abortion would be guilty of second degree murder whereas the previous provision was for imprisonment of from three to twenty years.

NOTES TO DECISIONS

ADDITIONAL REMEDY

District of Columbia Code provision authorizing revocation of license of person convicted in United States District Court for the District of Columbia of any felony, without further hearing or procedure, provides an additional remedy for revocation of license and did not preclude resort to action in equity by Commission on Licensure to Practice the Healing Art for revocation of license under statute authorizing same in case of misconduct. *Dr. H. M. Ladrey v. Commission on Licensure, etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

CRIMINAL CONTEMPT

Where trial judge in abortion prosecution permitted himself to become personally embroiled with defense counsel throughout trial and made statement to jury indicating his hostility toward counsel, trial judge, instead of finding counsel guilty of criminal contempt and imposing punishment, should have invited the Chief Judge of the District Court to assign another judge to sit in hearing of charge against counsel. *Offutt v. United States of America* (1954, 348 U. S. 11, 75 S. Ct. 11; reversing 93 U. S. App. D. C. 148).

DUE PROCESS

Under District of Columbia Code permitting revocation of license because of misconduct after institution of action in United States District Court for the District of Columbia sitting as a court of equity, where complaint charged in words of criminal statute that physician had performed an abortion physician could not contend that the word "misconduct" was too vague and indefinite to meet requirements of due process. *Dr. H. M. Ladrey v. Commission on Licensure, etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

EVIDENCE

In abortion prosecution of physician, wherein physician admitted treating complaining witness at time and place alleged by her and in manner described by her, but claimed that the treatment was not designed to cause an abortion, trial court properly permitted introduction of the testimony of two other women that physician agreed to and did perform an abortion on each in substantially the same manner as described by the complaining witness about the same time as the alleged abortion testified to by the complaining witness. *Harper v. United States* (1956, 99 U. S. App. D. C. 324, 239 F. 2d 945).

INDICTMENT

The preservation of life or health provisions in District of Columbia abortion statute forbidding the prescribing or administering of medicine, drug or other substance or use of instrument to procure miscarriage unless when necessary to preserve woman's life or health and under direction of competent licensed medical practitioner are intended to furnish the defense an opportunity for justification and are not part of description of offense required to be alleged or proved by prosecution. *Peckham v. United States* (1953, 93 U. S. App. D. C. 136, 210 F. 2d 693).

Joining of count charging commission of offense of abortion in May, 1951, with count charging the same defendant with commission of abortion in January, 1952, on same woman, was not error, since the offenses were of the same or similar character. *Id.*

INSTRUCTIONS

In prosecution for using instruments upon and administering drugs to named woman, then pregnant, with intent to procure her miscarriage, charge of court that it was immaterial whether or not woman was pregnant, if at time defendant believed she was pregnant, was not erroneous. *Henry L. Peckham, Jr., v. United States of America* (1955, 96 U. S. App. D. C. 312, 226 F. 2d 34; See also 93 U. S. App. D. C. 136, 210 F. 2d 693).

Instruction on necessity of finding guilt beyond reasonable doubt and instruction requiring government to establish that defendant prescribed or administered a

medicine, drug or other substance or used on the woman some instrument or means, that she was pregnant at the time and that defendant did the act with intent to procure a miscarriage adequately defined all essential elements of crime of abortion and adequately instructed jury as to necessity of proof beyond reasonable doubt that complaining witness was pregnant and that defendant did some act or administered some treatment or drug with intent to procure an abortion. *Peckham v. United States* (1953, 93 U. S. App. D. C. 136, 210 F. 2d 693).

In prosecution for abortion in May, 1951, and in January, 1952, instruction that witness who testified that he had assisted in arranging and furthering the first alleged abortion must be deemed an accomplice and that his testimony should be received with care and scrutinized with caution was not erroneous as carrying inference that defendant was guilty. *Id.*

Fact that disproportionate amount of charge was devoted to outlining Government's side of case in connection with second count of indictment alleging abortion as to which the defense won acquittal did not require reversal of conviction on first count alleging abortion on different date where defense of such first count consisted almost entirely of case as outlined in the charge. *Id.*

PREJUDICIAL ERROR

In prosecution for abortion, excessive injection of trial judge into examination of witnesses and judge's numerous comments to defense counsel, indicating at times hostility, though under provocation, demonstrated a bias and lack of impartiality which may well have influenced the jury and required reversal of conviction. *Peckham v. United States* (1953, 93 U. S. App. D. C. 136, 210 F. 2d 693).

In prosecution for abortion on two counts, refusal to allow defense counsel to examine whole file of hospital records of doctor who examined prosecuting witness at hospital and who used a part of file to refresh his recollection and who expressed opinion as to induced abortion relating only to second count of which defendant was acquitted was not prejudicial error. *Id.*

RULES OF INTERPRETATION

Under statute authorizing District Court of the United States for the District of Columbia sitting as a court of equity to suspend license upon evidence showing that licentiate has been guilty of misconduct, licentiate has available to him full protection of rules and "misconduct" as a ground for suspension or revocation is not left as a matter of opinion but is susceptible to complete exposition under rules and requires proof as a matter of fact accordingly. *Dr. H. M. Ladrey v. Commission on Licensure, etc.* (1958, 104 U.S. App. D.C. 239, 261 F. 2d 68; cert. denied 79 S. Ct. 288).

Chapter 4.—ARSON

§ 22-401 [6:51]. Definition and penalty.

NOTES TO DECISIONS

DOUBLE JEOPARDY

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221; reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

EVIDENCE

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 95 U. S. App. D. C. 45, 218 F. 2d 856).

Evidence sustained conviction for arson committed by malicious burning of building of another. *Lichten-*

walter v. United States (1951, 89 U. S. App. D. C. 187, 190 F. 2d 36).

PROLONGATION OF JEOPARDY

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221; reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

CONFESSION

In prosecution for malicious burning of another's property, record sustained trial court's ruling that defendant had failed to prove unnecessary delay in presentment to committing magistrate or that unnecessary delay had induced confession, and confession was properly admitted. *Gladys M. Tillotson v. United States* (1956, 97 U. S. App. D. C. 402, 231 F. 2d 736).

PREJUDICIAL ERROR

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 101 U. S. App. D. C. 177, 247 F. 2d 583).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Roosevelt Brady v. United States of America* (1955, 96 U. S. App. D. C. 251, 225 F. 2d 551).

Chapter 5.—ASSAULT—MAYHEM—THREAT OF BODILY HARM

§ 22-501 [6:26]. Assault with intent to kill, rob, rape, or poison.

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, § 24-203.

NOTES TO DECISIONS

ADDITIONAL PENALTY

One convicted of attempted robbery could not be given additional punishment under statute authorizing such where crime of violence is committed with pistol or firearms where indictment did not charge such aggravating facts, even though he did not dispute testimony and defended on issues of identity and insanity. *George T. Jordan v. U. S. District Court for the District of Columbia* (1956, 98 U. S. App. D. C. 160, 233 F. 2d 362).

Charge in indictment that offense was committed "with force and arms" was insufficient to charge that defendant had been "armed with pistol or other firearm", to bring him within purview of statute imposing additional penalty for aggravated offense. *Id.*

EVIDENCE OF INSANITY

In prosecution for assault with intent to commit robbery, evidence on issue of defendant's sanity at time of commission of crime was sufficient to support conviction. *Jordan v. United States of America* (1954, 95 U. S. App. D. C. 27, 217 F. 2d 670).

INDECENT LIBERTIES

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties re-

ferred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *G. Younger, Jr. v. United States* (1959, 105 U.S. App. D.C. 51, 263 F. 2d 735).

JURY INSTRUCTIONS

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *G. Younger, Jr. v. United States* (1959, 105 U.S. App. D.C. 51, 263 F. 2d 735).

MOTION ATTACKING SENTENCE

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 89 U. S. App. D. C. 332, 191 F. 2d 504).

PRIOR LAW

Post-conviction change in standards with regard to defense of insanity did not entitle person tried and convicted under previous standard to reversal. *Jordan v. United States of America* (1954, 95 U. S. App. D. C. 27, 217 F. 2d 670).

PROCEDURE

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 89 U. S. App. D. C. 322, 191 F. 2d 504).

§ 22-502 [6: 27]. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

ASSIGNMENT OF ERROR

An assignment of error in failing to instruct jury on simple assault in prosecution for assaults with dangerous weapon comes too late on appeal from district court's judgment, in absence of request during trial for such instruction. *Mac Illrath v. United States* (1951, 88 U. S. App. D. C. 270, 188 F. 2d 1009).

INSTRUCTIONS

In trial for assault with dangerous weapon, District Court is not required by criminal procedure rule to instruct jury that they may find defendant guilty of lesser offense of simple assault and should not so instruct them, in absence of evidence justifying conviction of simple assault. *Mac Illrath v. United States* (1951, 88 U. S. App. D. C. 270, 188 F. 2d 1009).

In prosecution for assaults on three persons with deadly weapon, evidence that defendant shot one of such persons with a pistol and then clubbed the others on their heads therewith, causing serious injuries, established assaults with dangerous weapon and did not justify instruction on simple assault. *Id.*

§ 22-504 [6: 29]. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

APPEAL

Party seeking review of alleged erroneous instructions cannot raise objection for the first time on appeal. *James Hale v. United States* (D. C. Mun. App. 1955, 114 A. 2d 74).

APPEAL AFTER SUSPENSION OF SENTENCE

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less than \$50 review shall be by application. *Id.*

BURDEN OF PROOF

In assault prosecution, it was incumbent upon Government to show that the act of the defendant was not accidental and that he had necessary criminal intent. *Dyson v. United States* (D. C. Mun. App. 1953, 97 A. 2d 135).

COMMON LAW ASSAULT

The assault contemplated by statute providing that whoever unlawfully assaults or threatens another in a menacing manner shall be fined or imprisoned is common law assault. *Guarro v. United States* (1956, 97 U. S. App. D. C. 97, 237 F. 2d 578).

"Assault" at common law is an attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denote at time an intention, coupled with present ability, of using actual violence against person. *Id.*

CONSENT

Even assuming that defendant might both deny offense of indecent assault on member of morals squad of police department and rely on apparent consent, evidence did not require finding as a matter of law that there had been apparent consent on part of police officer. *G. C. Day v. United States* (D.C. Mun. App. 1959, 148 A. 2d 463).

Unless there is consent, a sexual touching is sufficiently offensive to constitute an assault. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

Fact that police officer specifically denied being hurt, embarrassed or humiliated by alleged touching of his private parts did not negative assault. *Id.*

Where plainclothes police officer was member of morals squad, conduct of officer just before alleged sexual assault was of crucial significance bearing on criminal responsibility of assailant. *Id.*

A case of assault by a man touching another man's genital organ with invitation to homosexual act can be made out only by proof that complaining witness did not consent. *McDermott v. United States* (D. C. Mun. App. 1953, 98 A. 2d 287).

A police officer, by his own insidious conduct in patiently and cleverly encouraging and setting stage for furtive homosexual gesture by another man, charged with assault, placed himself in position of consenting to touching of his genital organ by such man, with invitation to homosexual act, and should not be heard to say, as prosecuting witness, that he was assaulted by accused. *Id.*

CORROBORATION

Testimony of complaining witness in prosecution for assault need not be corroborated. *Ingram v. United States* (D. C. Mun. App. 1954, 110 A. 2d 693).

Where testimony of certain witnesses would have been merely cumulative if they had been produced, defendants were not entitled to an adverse witness charge. *Id.*

DEFENSES

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of

Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

Where 13-year-old boy committed an indecent act upon a girl 4 years and 8 months old, act clearly constituted an assault, since child's acquiescence or submission was immaterial. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

ELEMENTS OF ASSAULT

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

EVIDENCE

Evidence did not sustain conviction for indecent assault upon a police officer. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

In assault prosecution of defendant, evidence of an offense of sexual nature was admissible and a proper basis for conviction. *Ernesto Guarro v. United States* (D. C. Mun. App. 1955, 116 A. 2d 408).

In assault prosecution, defendant, by offering evidence subsequent to denial of motion of acquittal, waived his rights regarding that motion. *Id.*

In assault prosecution of defendant who allegedly approached prosecution witness and placed his hand on witness' privates and squeezed them, the sexual nature of the alleged assault rendered admissible testimony by prosecution witness, who was an officer assigned to morals division of police department, that defendant had, after his arrest, admitted to officer the prior commission of acts of sodomy. *Dyson v. United States* (D. C. Mun. App. 1953, 97 A. 2d 135).

HOMOSEXUAL OVERTURE

Assault conviction, predicated upon homosexual overture, was sustained. *Alleyne Anderson v. United States* (D. C. Mun. App. 1955, 117 A. 2d 456).

In this type of case, a prosecution for assault may be sustained under this statute. *Id.*

Evidence sustained conviction for assault. *James F. Goodman v. United States of America* (D. C. Mun. App. 1955, 118 A. 2d 517).

INSTRUCTIONS TO JURY

In prosecution wherein defendant was convicted of assault, there was no plain error in court's instructions to the jury which would enable defendant to raise error on appeal for the first time. *James Hale v. United States* (D. C. Mun. App. 1955, 114 A. 2d 74).

REVERSIBLE ERROR

In simple assault prosecution, arresting officer's testimony, in response to question whether defendant had denied the assault, that denial took place in presence of defendant's parol officer constituted reversible error, and, when officer volunteered such information, court should have cautioned him and instructed jury to disregard the information or should have granted defendant's motion for mistrial. *R. L. Yeldell v. United States* (D.C. Mun. App. 1959, 153 A. 2d 637).

RIGHT TO COUNSEL

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

SUFFICIENCY OF CHARGE

Where defendant was charged with committing "indecent assault" upon girl 4 years and 8 months old and laws in jurisdiction made an unlawful assault a misdemeanor and did not use term "indecent assault", addition of word "indecent" to charge could be treated as surplusage and neither added to nor detracted from the

charge. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

SUFFICIENCY OF EVIDENCE

Evidence in support of claimed nonviolent sexual touching was not sufficient to support conviction under general assault statute. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

TESTIMONY OF ARRESTING OFFICER

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

§ 22-505 [6:30]. Assault on member of police force.

(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than five years or both.

(b) Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned not more than ten years. (R. S., D. C., § 432; June 29, 1953, 67 Stat. 95, ch. 158, § 205.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by increasing the penalty for violation of the section from a fine of \$500 or imprisonment for 2 years as previously provided to a fine of \$5,000 or imprisonment for 5 years or both, and a maximum of 10 years imprisonment if a dangerous weapon was used.

CROSS REFERENCE

Minimum sentence of one year, § 24-203.

NOTES TO DECISIONS

INSTRUCTIONS

In prosecution for assaulting police officer, requested instruction as to defendant's right to resist unlawful arrest and use such force as was at his command and necessary to prevent such arrest was properly refused as being too broad and inapplicable to issues of case. *Abrams v. United States* (1956, 99 U. S. App. D. C. 46, 237 F. 2d 42).

§ 22-506 [6:31]. Mayhem or maliciously disfiguring.

NOTES TO DECISIONS

SPECIFIC INTENT

So long as an act of mayhem is done maliciously and willfully, a specific intent is not necessary to constitute the crime, since the common-law definition, which is applicable, does not include a specific intention. *Brown v. United States* (1948, 84 U.S. App. D.C. 222, 171 F. 2d 832).

If an assault be so malicious and willful as to result in the loss of an eye, leg, or arm, it is immaterial to the gravity of the offense of mayhem that the assailant had no specific intention of depriving his victim of the eye, leg, or arm. *Id.*

Indictment and proof were not insufficient in prosecution for mayhem because a specific intent to maim and disfigure the complainant was neither alleged nor proved, since specific intent was not necessary to constitute mayhem. *Id.*

§ 22-507 [6:44]. Threats to do bodily harm.

The Municipal Court for the District of Columbia shall also have concurrent jurisdiction with the United States District Court for the District of

Columbia of threats to do bodily harm, and any person convicted of such offense shall be sentenced to imprisonment not exceeding six months or a fine not exceeding \$500, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (July 16, 1912, 37 Stat. 193, ch. 235, § 2; June 29, 1953, 67 Stat. 98, ch. 159, § 212.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by providing that the penalty should be imprisonment for not exceeding six months, or a fine of not more than \$500 or both; and in addition or in lieu thereof a bond could be required to keep the peace for one year. Prior to amendment the section had provided for a peace bond for not exceeding six months or in default of bond, imprisonment for not exceeding six months. In addition, "Municipal Court" was substituted for "police court" in the first sentence.

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

§ 22-701 [6:134]. Definition and penalty.

NOTES TO DECISIONS

RIGHT TO COUNSEL

Under Constitution's prohibition against unreasonable searches, and its guaranties of due process of law and effective representation by counsel, government agent's intrusion upon conferences between accused and his counsel invalidated conviction under federal "obstruction of justice" statute and District of Columbia bribery statute. *Caldwell v. United States* (1953, 92 U. S. App. D. C. 355, 205 F. 2d 879).

§ 22-704 [6:138]. Corrupt influence—Officials.

NOTES TO DECISIONS

CONCURRENT SENTENCE

Where defendant was convicted on count of conspiracy to bribe police officer, and also was convicted on intimately related bribery counts, and sentence under conspiracy count was for longer time than his concurrent sentence for bribery, conspiracy and bribery charges would be affirmed if no reversible error impaired conspiracy conviction. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

EVIDENCE

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, even if recordings of conversations between police officer who was subject of bribery, and defendants, were intercepted and recorded, and were introduced in evidence in violation of Federal Communications Act section, such question would not be reached in instant prosecution as instant use made of recordings was for refreshing recollection of police officer before giving his own testimony of the recorded conversations. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, recordings of conversations between police officer and defendants were admissible in evidence, where police officer testified as to operation of recording device, his method of operating such device, accuracy of the recordings, and identities of persons speaking. *Id.*

In prosecution for conspiracy to bribe police officer and also for bribery itself, to influence officer in enforcement of gambling laws, contention that recordings of conversations between police officer, who was subject of the conspiracy and bribery, and defendants were illegally intercepted and used in preparation of Government's trial was without merit where police officer him-

self made the recordings and transmitted the same information legally to other police officers to be utilized in preparation for trial of defendants. *Id.*

INDICTMENT

Where defendants made motion before trial attacking indictment charging them with conspiracy to bribe police officer and also for bribery itself on ground of alleged misjoinder of substantive charges, such motion went to validity of indictment and not to question of advisability of separate trials. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

Where offenses of conspiracy to bribe and bribery charged in indictment were of the same or similar character, and defendants charged with such crimes were alleged to have participated in same conspiracy, joinder of offenses and defendants in the indictment was permissible under Federal Criminal Procedure Rule. *Id.*

JOINT TRIAL OF SEPARATE CHARGES

In prosecution for conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, defendants, who were convicted on only part of the substantive counts, and who were not involved in the conspiracy, were not prejudiced by trial of the conspiracy charge and bribery charges together, in view of the different number of convictions entered against the different defendants indicating that the jury was selective and was returning verdicts only upon basis of evidence relevant to each count and each defendant and also where court charged in considerable detail as to the separate substantive counts. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

PRE-TRIAL INSPECTION

Under Federal Criminal Procedure Rule providing for pre-trial inspection of books, papers, documents or other objects designated in a subpoena, trial court was well within its discretion in declining to order inspection of original recordings of conversations between police officer and defendants, who were charged with conspiracy to bribe and bribery of police officer, where original recordings were too fragile to be used for discovery playing and where an affidavit was filed in which the accuracy of reproduction from the originals were certified and truth of affidavit was not brought into question. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

REVERSIBLE ERROR

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, refusal of trial court to grant defendants' request to make stenographic transcripts of recordings between police officers and defendants or to be furnished copies of transcripts by Government was not reversible error, where defendants were given opportunity to hear recordings and where parts of recordings admitted in evidence were played out of presence of jury with defendant's counsel present. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

SEPARATE TRIAL

If defendants, who were charged with conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, wished to be tried separately on those charges, request for separate trial on such charges should have been made in the trial court by motion under Federal Criminal Procedure Rule providing for such relief. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

Under Federal Criminal Procedure Rule providing for severance of offenses or defendants in event of prejudice as result of such joinder, defendants, who were only ones convicted in prosecution for conspiracy with other defendants, if they had requested separation of the substantive counts from the conspiracy count, would not have been prejudiced by refusal of trial court to grant motion, where evidence of their participation in conspiracy was complete and included other defendants on trial for substantive counts. *Id.*

VARIANCE BETWEEN INDICTMENT AND EVIDENCE

If alleged variance existed between count of indictment which charged one conspiracy of all the defendants to bribe police officer, and evidence which allegedly showed several conspiracies, such variance was not reversible error in regard to convictions of two of the defendants on the conspiracy count, where conspiracy of the two convicted embraced the other defendants in the plan, thus preventing surprise, and also in view of fact that the defendants would not be prejudiced by the variance in defending on ground of present conviction in event of attempted second prosecution for same offense, as resort could be had by defendants to record of evidence or even to parol evidence if necessary. *Monroe et al. v. United States* (1956, 98 U. S. App. D. C. 228, 234 F. 2d 49).

Chapter 9.—DOMESTIC RELATIONS

§ 22-901 [6: 37]. Cruelty to children.

NOTES TO DECISIONS

ERRONEOUS JURY INSTRUCTIONS

In prosecution of mother, who left her children chained in her home while she was absent, under statute making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child, instruction that jury should decide whether mother was acting reasonably under the circumstances or whether her action was unreasonable and dangerous was reversibly erroneous because of omission of requirement of an evil state of mind. *C. Mullen v. United States* (1958, 105 U.S. App. D.C. 25, 263 F. 2d 275).

GOOD INTENTIONS

Statue making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child calls for something worse than good intentions coupled with bad judgment. *C. Mullen v. United States* (1958, 105 U.S. App. D.C. 25, 263 F. 2d 275).

PRIVILEGED COMMUNICATION

Admission of defendant to Lutheran minister that she had chained her children after he had urged her to confess her sins, was a "privileged communication" and testimony thereof by minister was inadmissible in prosecution under statute making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child. *C. Mullen v. United States* (1958,—U.S. App. D.C.—, 263 F. 2d 275.)

§ 22-903 [6: 271]. Wilful neglect or refusal to support wife or minor child—Punishment—Order of allowance—Recognizance—Trial under original charge.

Any person in the District of Columbia who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances, or any person who shall, without just excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her minor children under the age of sixteen years in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment in the workhouse of the District of Columbia for not more than twelve months, or by both such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children: *Provided*, That before the trial, with the consent of the de-

fendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody on probation for the space of one year upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

If the court be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian or custodian of the minor child or children. The juvenile court of the District of Columbia is hereby given concurrent jurisdiction with the United States District Court for the District of Columbia in all cases arising under this section. (Mar. 23, 1906, 34 Stat. 86, ch. 1131, § 1; June 18, 1912, 37 Stat. 136, ch. 171, § 8; June 10, 1926, 44 Stat. 716, ch. 528, January 11, 1951, 64 Stat. 1242, ch. 1225, § 13.)

AMENDMENTS

1951—Section 1 of act January 11, 1951, repealed the last sentence but section 13 (a) reenacted it with a slight change in language.

CROSS REFERENCE

Suspension of sentence in cases in Juvenile Court, § 11-968.
Uniform support laws, Title 11, ch. 16.

NOTES TO DECISIONS

CONCURRENT JURISDICTION

In cases involving nonsupport of wife and minor children, the jurisdiction of the Juvenile Court of the District of Columbia is concurrent with that of the District Court. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

DOUBLE JEOPARDY

Prisoner sentenced on defective information charging nonsupport was placed in jeopardy and subsequent filing of new information, based on alleged nonsupport during same period, and sentence thereunder was barred. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 348).

INFORMATION

Information charging husband with nonsupport of wife and minor children but omitting word "wilfully" was

fatally defective. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

Information charging defendant with nonsupport of wife and minor children but omitting word "wilfully" was defective, but not void, and hence could not have served as basis for application for writ of habeas corpus. *Id.*

Information charging that parent had neglected to provide for support and maintenance of child was fatally defective to charge statutory crime of wilful neglect of children because it failed to charge that neglect was wilful. *Seidenberg v. United States* (D. C. Mun. App. 1953, 97 A. 2d 463).

Generally, where term "wilful" or "wilfully" is part of statutory definition of crime, indictment or information must so charge. *Id.*

SEPARABILITY OF OFFENSES

The District of Columbia statute making it misdemeanor for husband to wilfully neglect or refuse to provide for destitute wife or for any person to desert and wilfully neglect to support minor children under sixteen years of age, by use of disjunctive "or" makes two crimes, one by husband against his wife and the other by any person against his or her minor child, and one may be convicted for both nonsupport of wife and minor children thereunder as separate crimes. *Burke v. The United States* (1956, 99 U. S. App. D. C. 230, 239 F. 2d 50).

SUPPORT PAYMENTS

Where defendant, found guilty of failing to support his minor child, had agreed with his separated wife to submit their contentions as to amount to be paid for child support to the Juvenile Court for determination, order, made upon the basis of evidence of defendant's salary and expenses, that he pay \$10 a week out of a \$192 net monthly income for child support, did not appear unreasonable and was not an abuse of discretion. *Mack v. United States* (D. C. Mun. App. 1953, 93 A. 2d 567).

Chapter 10.—FORNICATION

Sec.

22-1002. Fornication.

§ 22-1002. Fornication.

If any unmarried man or woman commits fornication in the District, each shall be fined not more than \$300 or imprisoned not more than six months, or both. (June 29, 1953, 67 Stat. 99, ch. 159, § 214.)

CROSS REFERENCE

Definition of District see note under § 22-109.

Chapter 11.—DISORDERLY CONDUCT

Sec.

22-1121. Disorderly conduct—Generally.

§ 22-1107 [6:117]. Unlawful assembly—Profane and indecent language.

It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any pro-

fane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both for each and every such offense. (July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638; June 29, 1953, 67 Stat. 97, ch. 159, § 210.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by striking "twenty-five dollars" from the penalty provision in the last sentence and substituting "\$250 or imprisonment for not more than ninety days or both" in lieu thereof.

§ 22-1112 [6:292]. Indecent exposure.

(a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia, under penalty of not more than \$300 fine, or imprisonment of not more than ninety days, or both, for each and every such offense.

(b) Any person or persons who shall commit an offense described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than one year, or fined in an amount not to exceed \$1,000, or both, for each and every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Apr. 21, 1906, 34 Stat. 127, ch. 1647; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 101; June 29, 1953, 67 Stat. 92, ch. 159, § 202.)

AMENDMENTS

1953—Act of June 29, 1953, substituted the language now contained in the section for previous language. The amendment revised the language in subsections (a) and (b), and the limit for fines in subsection (a) was increased to \$300, and the limit for fines in subsection (b) was increased to \$1,000.

NOTES TO DECISIONS

CRIMINAL INTENT

A criminal intent must be shown in prosecution for indecent exposure before conviction can be upheld, and though exposure must be intentional and not accidental, the intent required is only a general one and need not be directed toward any specific person or persons. *Peyton v. D. C.* (D. C. Mun. App. 1953, 100 A. 2d 36)

An exposure becomes indecent when defendant exposes himself at such a time and place where as a reasonable man he knows or should know his act will be open to observation by others. *Id.*

CORROBORATION

Testimony of complaining witness in prosecution for committing a lewd, obscene or indecent act, which was corroborated by her companion except for the actual identification of defendant, was sufficiently corroborated to secure conviction. *W. L. McGhee v. District of Columbia* (D. C. Mun. App. 1958, 137 A. 2d 721).

Evidence sustained conviction of committing a lewd, obscene, or indecent act. *Id.*

Evidence showed sufficient corroboration of the circumstances to sustain conviction for making an indecent sexual proposal. *Howard v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 150).

ELEMENTS OF ASSAULT

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

RESENTENCING

Where prosecution was under one subsection of statute, the wording of which was followed by the information, but upon conviction sentence was imposed under another subsection of statute which provided for stiffer penalties, and evidence sustained conviction, case would be remanded with instructions to vacate existing sentence and to resentence defendant in accordance with subsection of statute under which he was prosecuted. *Howard v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 150).

TESTIMONY OF ARRESTING OFFICER

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

§ 22-1121. Disorderly conduct—Generally.

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby—

- (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;
- (2) congregates with others on a public street and refuses to move on when ordered by the police;
- (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons;

(4) interferes with any person in any place by jostling against such person or unnecessarily crowding him or by placing a hand in the proximity of such person's pocketbook, or handbag; or

(5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. (June 29, 1953, 67 Stat. 98, ch. 159, § 211.)

NOTES TO DECISIONS

CONSTRUCTION

Peeping in window of occupied, lighted apartment at 1:30 in the morning constituted "disorderly conduct" within breach of peace statute penalizing action tending to "disturb" or be "offensive" to others. *Carey v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 314).

The statute penalizing acts intended to provoke or likely to occasion breach of peace is penal and must be strictly construed. *Id.*

INDICTMENT

An information alleging that defendant "did then and there engage in disorderly conduct, to wit: was then and there a peeping Tom" was sufficient. *Carey v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 314).

Chapter 12.—EMBEZZLEMENT

§ 22-1202 [6:76]. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

NOTES TO DECISIONS

CHOICE OF VERDICTS

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (1957, 149 F. Supp. 409).

CONCURRENT SENTENCES

Where defendant was convicted under two counts of two consolidated indictments charging embezzlement and two counts charging obtaining money by false pretenses and sentences on false pretenses counts were each less than sentences imposed on embezzlement counts and were concurrent therewith and the convictions on the embezzlement counts were sustained, defendant's contentions regarding the convictions on the false pretenses counts would not be examined by Court of Appeals. *F. A. Gibson v. United States* (1959, — U.S. App. D.C. —, 268 F. 2d 586).

PAROL EVIDENCE

In embezzlement prosecution against building contractor who received a \$3,500 down payment from prosecuting witness who desired to have a house built on a vacant lot which the prosecuting witness did not own, parol evidence was admissible to show that, despite terms of written contract reciting that contractor was to construct the house for prosecuting witness and that prosecuting witness had made an advance payment of \$3,500, the contractor had orally agreed to purchase the lot for prosecuting witness and that pursuant to such agreement the prosecuting witness had made a \$3,500 down payment on lot and that prosecuting witness mistakenly believed that the written contract embodied the purchase of the lot as well as the construction of the house and that the \$3,500 was delivered to contractor as agent to purchase lot for prosecuting witness and that contractor knew that prosecuting witness entertained such mistaken belief. *F. A. Gibson v. United States* (1959, — U.S. App. D.C. —, 268 F. 2d 586).

PREJUDICIAL INSTRUCTION

Where, in prosecution for embezzlement, grand larceny, forgery, and uttering in connection with payment of death benefits to firemen's widows by defendant as officer of firemen's relief association, there was no question as to what specific sum of money was involved, defendant had sufficient information to make his defense, and there was not chance of double jeopardy, and, therefore, any variance in proof of ownership under instruction that, although money was alleged to be association's, it would not be fatal to conviction if money was found to be payee's, was not prejudicial. *United States v. Daigle* (1957, 149 F. Supp. 409).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction of secretary-treasurer of firemen's relief association for embezzlement of death benefits due fireman's widow. *United States v. Daigle* (1957, 149 F. Supp. 409).

§ 22-1207 [6:99]. Punishment for violations of sections 22-1202 to 22-1206.

Whoever shall be guilty of any offense defined in sections 22-1202 to 22-1206, shall, where the thing, evidence of debt, property, proceeds, or profits be of the value of less than \$100, be punished by imprisonment for not more than one year or a fine of

not more than \$200 or both. (Mar. 3, 1913, 37 Stat. 727, ch. 107; Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—Act of June 29, 1953, increased the value from \$50 to \$100.

§ 22-1211 [6:84]. Taking property without right.

NOTES TO DECISIONS

CONDUCT OF COUNSEL

In prosecution from taking property without right, denial of defendant's motion for mistrial on ground of prejudice to him by government counsel's request in jury's presence for short recess because articles taken were in complaining witness' automobile outside court-house and defendant's counsel had refused to waive their physical presence in court room, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

EVIDENCE, SUFFICIENCY

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

PETITION, AMENDMENT

In prosecution for taking property without right, amendment of petition, at prosecution's request, to conform to proof that taking occurred at 11:30 p. m., instead of 11:30 a. m., as originally charged, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

"THIEF" DEFINED

"Thief" is used generically in vagrancy statute and may be defined as one who takes property of another without knowledge or consent of latter; and a conviction under statute making it a misdemeanor to take and carry away property of another without right to do so rendered convict a "known thief" for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22-1301 [6:85]. False pretenses.

Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money or property so obtained, procured, sold, bartered, or disposed of is \$100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than \$200 or imprisoned for not more than one year, or both. Any person who obtains any lodging,

food, or accommodation at an inn, boarding-house, or lodging-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at such an inn, boarding-house, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of the District of Columbia be fined not more than \$100 or imprisoned not more than six months, or both, in the discretion of said court. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 842; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—Act of June 29, 1953, increased the valuation from \$50 to \$100.

NOTES TO DECISIONS

AUTOMOBILE INSURANCE CLAUSE DEFINED

Where one gives up possession of chattel to another who converts it to his own use, wrongdoer commits a trespass, and taking is by "larceny", but where one, though induced by fraud or trick, actually intends that title shall pass to wrongdoer, crime is that of "false pretenses". *Great American Indemnity Co. v. Yoder* (D. C. Mun. App. 1957, 131 A. 2d 401).

Where insured entered into agreement to sell insured automobile to third person for certain sum, and insured accepted a check, and third person departed with possession and title to automobile, and thereafter insured discovered that check was fraudulent, taking of automobile by third person was by "false pretenses" and not by "theft" within meaning of policy insuring against "theft" of automobile. *Id.*

CHATTEL MORTGAGE

In determining whether, under District of Columbia law, defendants had committed an offense by violating code provision that whoever by any false pretense, with intent to defraud, obtains from any person anything of value is guilty, fact, if true, that chattel mortgage to two television sets, which were purchased after defendant made misrepresentation as to indebtedness on automobile given as security for the purchase, would have to be construed as conditional sales contract, which would preclude defendant from having received title to them, was irrelevant. *Charles Nelson v. United States* (1955, 97 U. S. App. D. C. 6, 227 F. 2d 21).

CRIMINAL PROCEDURE

The rule of criminal procedure authorizing case to be transferred to district in which defendant was arrested to receive plea of guilty to the charge could be applied to a violation of District of Columbia Code. *United States v. G. L. Batton* (1958, 160 F. Supp. 173).

EVIDENCE

In prosecution of one who presented a bad check as good and got hotel to cash it, for obtaining money by false pretenses, court properly admitted in evidence some 13 other bad checks which defendant had represented as good, and for which he got cash at about the same time, for purpose of showing fraudulent intent, *Green v. United States* (1951, 88 U. S. App. D. C. 249, 188 F. 2d 48, certiorari denied 341 U. S. 955, 71 S. Ct. 1008).

EXPECTATION OF BELIEF

No one can be permitted to say, in regard to his own statements upon a material fact, that he did not expect to be believed, and, if such statements are knowingly false and wilfully made, fact that they are material is

proof of an attempted fraud, since materiality, in eye of law, consists in their tendency to influence conduct of party who has interest in them and to whom they are addressed. *Charles Nelson v. United States* (1955, 97 U. S. App. D. C. 6, 227 F. 2d 21).

INNOCENT INTENT

Wrongful acts, which are knowingly or intentionally committed, cannot be justified or excused on ground of innocent intent, since color of act determines complexion of intent. *Charles Nelson v. United States* (1955, 97 U. S. App. D. C. 6, 227 F. 2d 21).

JURISDICTION

On appeal from conviction for obtaining money by false pretenses, Court of Appeals was not required to consider defendant's criticism of warrant on which he was arrested, since jurisdiction in a Criminal Case is not impaired by fact that defendant was brought before court in an unlawful manner. *Green v. United States* (1951, 88 U. S. App. D. C. 249, 188 F. 2d 48, certiorari denied 341 U. S. 955, 71 S. Ct. 1008).

JURY INSTRUCTIONS

In prosecution for obtaining goods by false pretenses, instruction, which enumerated elements of the crime which were to be proven beyond a reasonable doubt, was, under District of Columbia law, correct and adequate for jury's guidance. In prosecution for obtaining goods by false pretenses, court was not bound to adopt defendant's theory of the case. *Charles Nelson v. United States* (1955, 97 U. S. App. D. C. 6, 227 F. 2d 21).

STATUTE OF LIMITATIONS

Statute of limitations did not run during absence from the District of Columbia of defendant charged with obtaining money by false pretenses in the District of Columbia even if he did not leave the District of Columbia to avoid prosecution. *Green v. United States* (1951, 88 U. S. App. D. C. 249, 188 F. 2d 48, certiorari denied 341 U. S. 955, 71 S. Ct. 1008).

SUFFICIENCY OF EVIDENCE

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendant's guilt was sufficient for the jury. *Cooper and Williams v. United States* (D. C. Mun. App. 1956, 123 A. 2d 918).

§ 22-1304. Falsely impersonating public officer or minister.

NOTES TO DECISIONS

CRIMINAL INTENT

False personation is in the nature of positive aggressions or invasions, such as constitute common-law offenses, and hence proof of criminal intent is required and refusal of requested instruction requiring criminal or felonious intent was reversible error. *H. D. Levine v. United States* (1958, 104 U.S. App. D.C. 281, 261 F. 2d 747).

RELIANCE ON REPRESENTATION

Reliance is not an element of statutory offense of false personation, and prosecution need not establish that parties to whom the alleged false representation was made relied upon it. *H. D. Levine v. United States* (1958, 104 U.S. App. D.C. 281, 261 F. 2d 747).

REVERSIBLE ERROR

In prosecution for falsely representing self to be a police officer, refusal of requested instruction on the factual defense theory, raised by defendant's testimony, that he merely stated truthfully that he was an attorney and "officer of the court," was reversible error. *H. D. Levine v. United States* (1958, 104 U.S. App. D.C. 281, 261 F. 2d 747).

SUBSTANTIAL RIGHTS

Record on appeal from conviction for defendant's falsely representing himself as a notary public and attempting to exercise authority of a notary public disclosed no error affecting substantial rights. *Leonard S. Fentress v. United States* (1955, 97 U. S. App. D. C. 132, 228 F. 2d 646).

§ 22-1306 [6:303]. False personation of police officer.

NOTES TO DECISIONS

ERROR

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Wheeler v. United States* (1951, 89 U. S. App. D. C. 143, 190 F. 2d 663).

INSTRUCTIONS

In prosecution for impersonating police officer, trial court's reading of statute defining crime as part of instructions to jury sufficiently charged elements of the crime. *Wheeler v. United States* (1951, 89 U. S. App. D. C. 143, 190 F. 2d 663).

Chapter 14.—FORGERY—FRAUDS

§ 22-1401. Forgery.

NOTES TO DECISIONS

FORGERY BY FALSE MAKING

Forgery by false making has been committed where the accused, with intent to defraud, proffers a blank note to a customer and then induces the customer, who is reasonably justified in believing the representation, to sign it on the false representation that the paper is something other than a note, and the accused then fills in blanks and negotiates note. *S. Lieberman v. United States* (1958, 102 U. S. App. D. C. 310, 253 F. 2d 46).

Where contractor deceived customers into signing blank promissory notes and deeds of trust and later filled in instruments and passed them, he was guilty of forgery. *Id.*

POST-CONVICTION CHANGE IN STANDARDS

Post-conviction change in standards with regard to defense of insanity did not entitle defendant, tried and convicted under previous standard, to reversal, because court did not charge jury on issue of insanity in accordance with post-conviction change. *Walter L. Stogner v. United States* (1955, 97 U. S. App. D. C. 172, 229 F. 2d 513).

§ 22-1410 [6:264]. Making, drawing, or altering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

NOTES TO DECISIONS

ELEMENTS OF PROOF

In prosecutions for passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, proof of fact, not alleged in informations, that checks covered purchases of war surplus articles under veterans' preference, was unnecessary for conviction. *McGuinness v. United States* (D. C. Mun. App. 1950, 77 A. 2d 22).

INTENT TO DEFRAUD

In prosecution for violation of statute making it a crime for any person, with intent to deceive, to deliver any check while knowing that there are insufficient funds to his credit with bank for payment of such check, question of whether or not defendant had an intent to defraud in issuance of check for past consideration, presented a question of fact for the jury. *C. E. Clarke v. United States* (1959, 105 U.S. App. D.C. 269, 263 F. 2d 269).

ISSUANCE FOR ANTECEDENT DEBT

Under "worthless" check statute, fact that checks were given in payment of antecedent debt did not destroy presumption of fraudulent intent, and evidence as to issuance of two checks which were dishonored for lack of sufficient funds established prima facie case authorizing submission of case to jury in absence of any evidence by defendant on the point. *C. E. Clarke v. United States* (D. C. Mun. App. 1958, 140 A. 2d 181).

Fact that a check is issued for a past-due obligation does not preclude a conviction under the "worthless" statute. *Id.*

LIMITATIONS

The Wartime Suspension of Limitations Act was inapplicable to charges of violating District of Columbia statute by passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, though giving of such checks may have resulted in offenses within all categories of extension statute, as none of such offenses was essential ingredient of violation of local statute, so that prosecutions begun over three years after commission of offenses were barred by general statute of limitations for non-capital offenses. *McGuinness v. United States* (D. C. Mun. App. 1950, 77 A. 2d 22).

§ 22-1411 [6:265]. Fraudulent advertising.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In prosecution upon two informations charging in effect that accused inserted advertising calculated to induce readers for a valuable consideration to employ the advertiser's service, "knowing the same to be false and containing certain false, untrue and misleading statements," action of trial court in permitting amendments whereby words "for a valuable consideration" were deleted and words "with intent to barter, sell, or exchange any goods, wares, or merchandise, or anything of value" were added, was not, so far as appeared from record, prejudicial, and was not abuse of discretion. *Joseph Felix Robles v. United States* (D. C. Mun. App. 1955, 115 A. 2d 303).

Chapter 15.—GAMBLING

Sec.

22-1514. Immunity of witnesses—Record.

22-1515. Presence in illegal establishments.

§ 22-1501 [6:151]. Lotteries—Promotion—Sale or possession of tickets.

NOTES TO DECISIONS

ARREST AND SEARCH

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States*, *Wiggins v. United States* (1953, 93 U. S. App. D. C. 90, 209 F. 2d 298, certiorari denied 347 U. S. 905, 74 S. Ct. 430).

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure", though made without search or arrest warrant. *Fisher v. United States* (1953, 92 U. S. App. D. C. 247, 205 F. 2d 703).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington et al. v. United States* (1953, 92 U. S. App. D. C. 31, 202 F. 2d 214).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson*. (1953, 113 F. Supp. 359).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and

authorize admission of slips in evidence against defendant. *Mills v. United States* (1952, 90 U. S. App. D. C. 365, 196 F. 2d 600).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was legal where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175).

Where police officers legally obtained search warrant for certain premises which they believed was being used in numbers lottery and entered and found extensive evidence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1951, 90 U. S. App. D. C. 67, 193 F. 2d 703).

CONSPIRACY

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *R. L. Taylor v. United States*, *L. E. Beecham v. United States* (1958, 104 U.S. App. D.C. 219, 260 F. 2d 737).

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

CONSTITUTIONALITY

Gamblers' Occupational Tax Act is not unconstitutional as applied to person in District of Columbia on ground that it violates privilege against self-incrimination notwithstanding fact that wagering is by federal law a crime in the District of Columbia. *Lewis v. United States of America* (1955, 348 U. S. 419, 75 S. Ct. 415).

DOUBLE CONVICTION FOR SAME OFFENSE

Even if defendant was twice convicted for same offense, any error was cured by concurrent sentences imposed. *J. H. Lewis v. United States* (1958, 105 U.S. App. D.C. 15, 263 F. 2d 265).

ELECTION OF COUNTS

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicative, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal and Court of Appeals would not consider merits of contention. *John F. Aikens et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

EVIDENCE

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count

would also be reversed. *R. L. Taylor v. United States*, *L. E. Beecham v. United States* (1958, 104 U.S. App. D.C. 219, 260 F.2d 737).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 99 U.S. App. D. C. 351, 240 F.2d 37).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of operation of lottery. *Maynard v. United States*, *Mallette v. United States* (1954, 94 U.S. App. D. C. 347, 215 F.2d 336).

Whether lottery slips seized under search warrant were dead or alive they could be introduced in support of charge of operating a lottery. *Shaw v. United States*, *Wiggins v. United States* (1953, 93 U.S. App. D. C. 90, 209 F.2d 298, certiorari denied 347 U.S. 905, 74 S.Ct. 430).

Where Court of Appeals could not determine from record of more than 2,000 pages that jury would have convicted defendant had not evidence obtained through unreasonable search and seizure been adduced, conviction would be reversed and case remanded for new trial. *Nelson v. United States*, *Nowland v. United States*, *Lee v. United States*, *Lowery v. United States*, *Kirby v. United States*, *MacWilliams v. United States*, *Trent v. United States*, *Brady v. United States* (1953, 93 U.S. App. D. C. 14, 208 F.2d 505, certiorari denied 346 U.S. 827, 74 S.Ct. 48).

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted prima facie evidence of carrying on of a lottery. *Clement v. United States* (1953, 93 U.S. App. D. C. 154, 208 F.2d 46).

In prosecution for operation of lottery known as numbers game, admission of numbers slips, numbers books, and other physical evidence seized at time of defendant's arrest, was proper, notwithstanding that it was not shown that numbers slips related to an existing lottery rather than to one already completed. *Harvey v. United States* (1952, 197 F.2d 594).

GAMBLERS' TAX ACT VALID

The Gamblers' Occupational Tax Act, as applied to persons in District of Columbia, constitutes a valid exercise of the taxing power and is not a penalty under the guise of a tax, even though wagering is by federal law a crime in the District of Columbia. *Lewis v. United States of America* (1955, 348 U.S. 419, 75 S.Ct. 415).

GAMBLERS' TAX NOT A LICENSE

Provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay a special tax of \$50 before engaging in such business does not give a person, upon payment of the fee, a license to engage in wagering in District of Columbia, where wagering is, by federal law, a crime. The federal government may tax what it also forbids. *Lewis v. United States of America* (1955, 348 U.S. 419, 75 S.Ct. 415).

GAMING TABLE

The statute penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 88 U.S. App. D. C. 244, 188 F.2d 19).

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Id.*

INDICTMENT

Under statute making it unlawful to keep, set up, or promote a lottery, the charge may contemplate an act already complete when officer arrives, and possession of

numbers slips, whether expired or not, may be relevant and material evidence that possessor has been conducting a lottery, and possessor need not be caught in the act, but may be caught with damaging evidence of a completed offense. *Harvey v. United States* (1952, 197 F.2d 594).

INSPECTION

Defendants are entitled to inspection before trial of documents and statements which are or may become evidence. *United States v. Bell* (1955, 126 F. Supp. 612).

INSTRUCTIONS

Provision of lottery statute that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States*, *Mallette v. United States* (1954, 94 U.S. App. D. C. 347, 215 F.2d 336).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of statute providing that such possession did constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

In prosecution under six count indictment charging violation of laws against lotteries, instruction to effect that every circumstance relied upon by prosecution as part of circumstantial evidence tending to convict, must be established beyond reasonable doubt was properly refused in view of other instructions. *Shaw v. United States*, *Wiggins v. United States* (1953, 93 U.S. App. D. C. 90, 209 F.2d 298, certiorari denied 347 U.S. 905, 74 S.Ct. 430).

Where defendant in prosecution for promotion of numbers game renewed, during trial, motion to suppress evidence obtained incident to arrest of defendant without a warrant, on ground that there was no probable cause for defendant's arrest, and court, instead of determining issue of probable cause, improperly submitted issue of probable cause to jury, admission of testimony of police officers that they were experienced in the investigation of the numbers game and that because of such experience, officers knew from conduct of defendant that he was participating in operation of a lottery, was reversible error, because testimony trenched on jury's duty to determine ultimate question whether defendant was guilty. *Simmons v. United States* (1953, 92 U.S. App. D. C. 122, 206 F.2d 427).

MOTION TO DISMISS

Where count one charged in effect that the defendant, among others, violated the District of Columbia statute relating to sale of lottery tickets, and counts two through seven charged that such defendant sold named person a chance in a lottery on six different dates, defendant's motion for dismissal of counts two through seven would not be granted even though the defendant could not be found guilty of count one if the government proved that defendant violated the statute by proving only the six sales that gave rise to counts two through seven; the determination of that matter must await the trial on the facts. *United States v. O. L. Long et al.* (1959, 169 F. Supp. 730).

MOTION TO SUPPRESS

In proceedings on defendant's motion to suppress and for return of property seized from his custody, possession and person under a warrant for the search of an apartment, evidence required finding that there had been a lack of probable cause to believe that grounds existed to support issuance of search warrant. *United States v. Johnson* (1953, 113 F. Supp. 359).

In proceedings on defendant's motion to suppress and for return of property seized from his custody, possession and person under a warrant for the search of an apartment, evidence required finding that there had been a

lack of probable cause to believe that grounds existed to support issuance of search warrant. *Id.*

MULTIPLE VIOLATIONS

Six sales of lottery tickets on different dates to the same person are six violations of the District of Columbia statute relating to gambling. *United States v. O. L. Long et al.* (1959, 169 F. Supp. 730).

NEW TRIAL

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 93 U. S. App. D. C. 307, 209 F. 2d 818).

POSSESSION OF "DEAD" OR "HIT" TICKETS

Even possession of "dead" or "hit" lottery tickets falls within statutory language raising presumption of violation of statute proscribing operation of lottery. *United States v. M. A. Lewis et al.* (1959, 171 F. Supp. 71).

PREJUDICIAL ERROR

Where papers and documents obtained from one of several defendants in joint prosecution for violation of lottery laws, were obtained as result of unreasonable search and seizure, the use of evidence so obtained infected the cases of other defendants, and denial of motion to suppress such evidence, made by defendant from whom the papers and documents were illegally seized, was error prejudicial to other defendants as well. *Nelson v. United States, Nowland v. United States, Lee v. United States, Lowery v. United States, Kirby v. United States, MacWilliams v. United States, Trent v. United States, Brady v. United States* (1953, 93 U. S. App. D. C. 14, 208 F. 2d 505).

PRE-TRIAL ORDER OF SUPPRESSION

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as a "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 354 U. S. 394, 77 S. Ct. 1332).

PROBABLE CAUSE FOR SEARCH WARRANT

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a ten week period disclosed probable cause for issuance of search warrant. *United States v. O. L. Long et al.* (1959, 169 F. Supp. 730).

Where police investigation extending over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that eleven day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

PROOF OF POSSESSION

Proof of possession of numbers slips is not essential to conviction for operating lottery. *United States v. M. A. Lewis et al.* (1959, 171 F. Supp. 71).

PROPRIETY OF SEARCH AND ARREST WARRANTS

In numbers game prosecution, wherein defendants moved to suppress evidence and for return of property, evidence established that police officers, who had submitted affidavits upon which warrants had issued, had had probable cause to believe, through personal contact, knowledge, observation and information, that the premises searched were being used for operation of a numbers lottery and that evidence of crime was there concealed. *United States v. Bell* (1955, 126 F. Supp. 612).

SEARCH AND SEIZURE

Where District of Columbia Metropolitan Police received information linking telephone number to num-

bers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Nelson C. Haje et al.* (1958, 159 F. Supp. 870).

SEARCH WARRANT

Fact that provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay special tax of \$50 and exhibit stamp in his place of business might furnish probable cause for issuance of search warrant could not be urged as defense by person who was arrested for engaging in business of wagering without paying special tax. *Lewis v. United States of America* (1955, 348 U. S. 419, 75 S. Ct. 415).

SEVERANCE

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States, Mallette v. United States* (1954, 94 U. S. App. D. C. 347, 215 F. 2d 336).

SUFFICIENCY OF EVIDENCE

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *John F. Aikens et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

TRIAL COUNSEL'S CONDUCT

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1951, 90 U. S. App. D. C. 67, 193 F. 2d 703).

UNLAWFUL SEARCH

Where suspected gambler appeared, without counsel, before Senate Crime Investigating Committee, under compulsion of subpoena, and committee, without advising him of his rights to counsel and against self-incrimination, threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told truth, and, with warning that he was still under subpoena, directed him to lead policeman to his home and there turn over a book, and where policeman, upon entering the home and learning that the book was not available examined and took without process other papers and documents, such papers and documents were obtained by unreasonable search and seizure, and such evidence was inadmissible. *Nelson v. United States, Nowland v. United States, Lee v. United States, Lowery v. United States, Kirby v. United States, MacWilliams v. United States, Trent v. United States, Brady v. United States* (1953, 93 U. S. App. D. C. 14, 208 F. 2d 505).

§ 22-1502 [6:151a]. Possession of lottery or policy tickets.

If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation, receipt, ticket,

certificate, bill, slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of sections 22-1501, 22-1504, or 22-1508, he shall, upon conviction of each such offense, be fined not more than \$1,000 or be imprisoned for not more than one year, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof. (Apr. 5, 1938, 52 Stat. 198, ch. 72, § 2; June 29, 1953, 67 Stat. 95, ch. 159 § 206.)

AMENDMENTS

1953—Act of June 29, 1953, amended section so as to refer to violations under sections 22-1501, 22-1504, or 22-1508. The section was further amended to create a presumption that possession of prohibited records is knowing possession, and the maximum penalty for violation of the section was increased from a \$500 fine or 6 months imprisonment or both, to a \$1,000 fine or 1 year imprisonment, or both.

NOTES TO DECISIONS

ARREST AND SEARCH

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure", though made without search or arrest warrant. *Fisher v. United States* (1953, 92 U. S. App. D. C. 247, 205 F. 2d 703).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington et al. v. United States* (1953, 92 U. S. App. D. C. 31, 202 F. 2d 214).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson* (1953, 113 F. Supp. 359).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was legal where the facts and circumstances within the arresting officers knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and authorize admission of slips in evidence against defendant. *Mills v. United States* (1952, 90 U. S. App. D. C. 365, 196 F. 2d 600).

CONSCIOUS POSSESSION

Where conscious possession of papers to be used in violating statute making it unlawful to "purchase, possess, own or acquire any chance, right, or interest * * * in any policy lottery or any lottery * * *" was clearly proved, accused was properly convicted under statute prohibiting any person from knowingly having in his possession any paper used or to be used in violating the statute. *Ferguson v. United States* (1956, 99 U. S. App. D. C. 331, 239 F. 2d 952).

CONSPIRACY

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did

not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *R. L. Taylor v. United States, L. E. Beecham v. United States* (1958, 104 U.S. App. D.C. 219, 260 F. 2d 737).

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

CONSTITUTIONALITY

Statute making possession of numbers slips a crime is constitutional. *George Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

CONSTRUCTION

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted an offense under statute penalizing possession of slips "used, or to be used" for carrying on a lottery, even though amendment adding the words "current or not current" had not yet been enacted. *Clement v. United States* (1953, 93 U. S. App. D. C. 154, 208 F. 2d 46).

Conviction of having possession of numbers slips in violation of lottery laws was warranted as against contention that there was not any evidence to indicate that such slips were "live" slips, that is, were tickets in an existing lottery. *Ledbetter v. United States* (1953, 93 U.S. App. D.C. 155, 211 F. 2d 628 Rehearing denied Feb. 4, 1954).

ELECTION OF COUNTS

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicious, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *John F. Aikens et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

ELEMENTS OF LOTTERY

Though consideration together with chance and prize is one of three elements necessary to constitute a lottery, it is unnecessary, in prosecution for possession of numbers slips, to prove that consideration has passed for them or that they have entered the play of the numbers game. *George Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

EVIDENCE

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. *R. L. Taylor v. United States, L. E. Beecham v. United States* (1958, 104 U.S. App. D.C. 219, 260 F. 2d 737).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of

possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of operation of lottery. *Maynard v. United States, Mallette v. United States* (1954, 94 U. S. App. D. C. 347, 215 F. 2d 336).

INCIDENTAL SEARCH

Arrest of defendant, a cafeteria employee, after manager voiced suspicions to officer that defendant was stealing food, was without probable cause, and incidental search that turned up lottery tickets and other paraphernalia for use in lottery was illegal. *Mathis v. United States* (D. C. Mun. App. 1957, 129 A. 2d 178).

INSTRUCTIONS

Provision of lottery statute that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States, Mallette v. United States* (1954, 94 U. S. App. D. C. 347, 215 F. 2d 336).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of statute providing that such possession did constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

NEW TRIAL

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 93 U. S. App. D. C. 307, 209 F. 2d 818).

PREJUDICIAL ERROR

In prosecution of defendant for possessing lottery slips which were seized by police after illegally entering premises at which they arrested defendant, admission of slips constituted prejudicial error. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

PRETRIAL ORDER OF SUPPRESSION

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 354 U. S. 394, 77 S. Ct. 1332).

PROBABLE CAUSE FOR SEARCH WARRANT

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. O. L. Long et al.* (1959, 169 F. Supp. 730).

Where police investigation extended over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

SEARCH AND SEIZURE

Where District of Columbia Metropolitan Police received information linking telephone number to num-

bers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Nelson C. Haje et al.* (1958, 159 F. Supp. 870).

Where police officers legally obtained search warrant for certain premises which they believed was being used in numbers lottery and entered and found extensive evidence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1951, 90 U. S. App. D. C. 67, 193 F. 2d 703).

SEVERANCE

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States, Mallette v. United States* (1954, 94 U. S. App. D. C. 347, 215 F. 2d 336).

SUFFICIENCY OF EVIDENCE

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *John F. Aikens et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

Evidence that defendant admitted ownership of billfold containing quantity of undated numbers slips was prima facie indicative that possession of such tickets was violative of statute forbidding possession of lottery slips and shifted burden of going forward with the evidence to defendant to prove that numbers slips were not lottery slips within meaning of statute. *Roseborough v. United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

TRIAL COUNSEL'S CONDUCT

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1951, 90 U. S. App. D. C. 67, 193 F. 2d 703).

§ 22-1504 [6:153]. Gaming—Setting up gaming table—Inducing play.

NOTES TO DECISIONS

EVIDENCE

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 88 U. S. App. D. C. 244, 189 F. 2d 19).

IN GENERAL

The statute penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 88 U. S. App. D. C. 244, 189 F. 2d 19).

§ 22-1505 [6: 154]. Permitting gaming table or device to be set up.

(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the District of Columbia, used or to be used in violating the provisions of section 22-1501 or 22-1504, shall be deemed "gambling premises" for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain or aid or permit the maintaining of any gambling premises.

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22-1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of section 22-1504; or

(3) in maintaining any gambling premises, shall be subject to seizure by any member of the Metropolitan Police force or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and shall, unless good cause is shown to the contrary by the owner, be forfeited to the District of Columbia by order of any court having jurisdiction unless good cause is shown to the contrary by the owner, for disposition by public auction or as otherwise provided by law. Bona fide liens against property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. Forfeit moneys and other proceeds realized from the enforcement of this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(d) Whoever violates this section shall be imprisoned not more than one year or fined not more than \$1,000, or both, unless the violation occurs after he has been convicted of a violation of this section, in which case he may be imprisoned for not more than five years, or fined not more than \$2,000, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866; June 29, 1953, 67 Stat. 95, ch. 159, § 206.)

AMENDMENTS

1953—Act of June 29, 1953, amended the section (which previously prohibited any person from permitting a gambling device on property owned, occupied, or controlled by him) so as to define as "gambling premises" any premises used to violate sections 22-1501 or 22-1504. The act also amends the section so as to make illegal the maintenance of gambling premises, to provide for a forfeiture of things of value used in gambling as there defined, and to raise the penalty for violation from a maximum of \$500 or imprisonment of 6 months or both to a fine of \$1,000 or imprisonment for 1 year or both for a first violation, and a fine of \$2,000 or imprisonment for 5 years or both for a person with a prior conviction under the section.

NOTES TO DECISIONS

ALTERNATIVE REMEDIES

Owners of property, held by District of Columbia as preliminary to libel proceedings for its forfeiture pursuant to statute authorizing forfeiture of property used in lottery or gaming activities, could apply for administrative relief, could sue officers who seize the property in trespass, or could assert their right as claimants in the libel when filed. *United States v. Bell* (1954, 120 F. Supp. 670).

CONSPIRACY

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

ELECTION OF COUNTS

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicitous, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *John F. Aikens et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

EVIDENCE

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 99 U. S. App. D. C. 351, 240 F. 2d 37).

INSTITUTION OF PROCEEDINGS FOR FORFEITURE

Property held as preliminary to forfeiture proceeding, under statute authorizing forfeiture of property used in lottery or gaming activities, would be ordered returned unless libel for forfeiture were filed within five days, in view of fact that District of Columbia Municipality had notice of two motions for more than sixty days and of three motions for more than fifty days wherein property owner sought return of property. *United States v. Bell* (1954, 120 F. Supp. 670).

JURISDICTION

Court, in criminal proceeding against owners of property, held by District of Columbia as preliminary to proceeding for its forfeiture, pursuant to statute authorizing forfeiture of property used in lottery or gaming activities, had jurisdiction to order return of the property. *United States v. Bell* (1954, 120 F. Supp. 670).

MOTION FOR RETURN OF PROPERTY

Averment by United States Attorney, made in reply to motion in criminal proceeding for return of property seized, that property will not be used as evidence, is not sufficient to defeat the motion. *United States v. Bell* (1954, 120 F. Supp. 670).

PROBABLE CAUSE FOR SEARCH WARRANT

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting

wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. O. L. Long et al.* (1959, 169 F. Supp. 730).

Where police investigation extended over a ten week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

SUFFICIENCY OF EVIDENCE

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *John F. Aiken et al. v. United States* (1956, 98 U. S. App. D. C. 66, 232 F. 2d 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

§ 22-1506 [6:155]. Three-card monte and confidence games.

NOTES TO DECISIONS

ARREST AND SEARCH

In prosecution for practicing confidence game and swindle known as three-card monte, evidence as to what arresting officers saw transpiring indicated that they were justified in making arrest without warrant, and articles seized as incident to such arrest were admissible in evidence regardless whether crime charged was misdemeanor, as indicated by statute, or felony, because punishable by imprisonment for more than one year. *Coleman v. United States, Witherspoon v. United States* (1954, 94 U. S. App. D. C. 311, 215 F. 2d 681).

§ 22-1507 [6:156]. "Gaming table" defined.

NOTES TO DECISIONS

DEFINITION

The statute penalizing anyone setting up in the District of Columbia any "gaming table" etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 88 U. S. App. D. C. 244, 188 F. 2d 19).

EVIDENCE

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 88 U. S. App. D. C. 244, 188 F. 2d 19).

§ 22-1508 [6:157]. Gambling pools and book making.

It shall be unlawful for any person, or association of persons, within the District of Columbia to purchase, possess, own, or acquire any chance, right, or interest, tangible or intangible, in any policy lottery or any lottery, or to make or place a bet or wager, accept a bet or wager, gamble or make books or pools on the result of any athletic contest. For the purpose of this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis, golf, or wrestling match, or a tennis or golf tournament, or a prize fight or boxing match, or a trotting or running race of horses, or a running race of dogs, or any other athletic or sporting event or contest. Any person

or association of persons violating this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3; June 29, 1953, 67 Stat. 96, ch. 159, § 206.)

AMENDMENTS

1953—Prior to act of June 29, 1953, the section prohibited any person from betting, gambling, or making book on the result of races, elections, contests, or baseball games. As amended the section prohibits any person from owning or accepting a bet or making book on any athletic event. The maximum penalty is increased from \$500 fine or imprisonment for 90 days or both to a \$1,000 fine or imprisonment for 1 year or both.

NOTES TO DECISIONS

CONSCIOUS POSSESSION

Where conscious possession of papers to be used in violating statute making it unlawful to "purchase, possess, own or acquire any chance, right, or interest * * * in any policy lottery or any lottery * * * was clearly proved, accused was properly convicted under statute prohibiting any person from knowingly having in his possession any paper used or to be used in violating the statute. *Ferguson v. United States* (1956, 99 U. S. App. D. C. 331, 239 F. 2d 952).

SEARCH AND SEIZURE

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Nelson C. Haje et al.* (1958, 159 F. Supp. 870).

§ 22-1514. Immunity of witnesses—Record.

(a) Whenever, in the judgment of the United States attorney for the District of Columbia, the testimony of any witness, or the production of books, papers, or other records or documents, by any witness, in any case or proceeding involving a violation of this chapter before any grand jury or a court in the District of Columbia, is necessary in the public interest, such witness shall not be excused from testifying or from producing books, papers, and other records and documents on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or subject him to penalty or forfeiture; but such witness shall not be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such witness so testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in so testifying.

(b) The judgment of the United States attorney for the District of Columbia that any testimony, or the production of any books, papers, or other records or documents, is necessary in the public

interest shall be confirmed in a written communication over the signature of the United States attorney for the District of Columbia, addressed to the grand jury or the court in the District of Columbia concerned, and shall be made a part of the record of the case or proceeding in which such testimony or evidence is given. (June 29, 1953, 67 Stat. 96, ch. 159, § 206.)

§ 22-1515. Presence in illegal establishments.

(a) Whoever is found in the District in a gambling establishment or an establishment where intoxicating liquor is sold without a license or any narcotic drug is sold, administered, or dispensed without a license shall, if he knew that it was such an establishment and if he is unable to give a good account of his presence in the establishment, be imprisoned for not more than one year or fined not more than \$500, or both.

(b) Whoever is employed in a gambling establishment in the District or an establishment in the District where intoxicating liquor is sold without a license or where any narcotic drug is sold, administered, or dispensed without a license, knowing that it is such an establishment, shall be imprisoned for not more than one year or fined not more than \$500, or both. (June 29, 1953, 67 Stat. 97, ch. 159, § 208.)

CROSS REFERENCES

Unlawful acts under Uniform Narcotic Drug Act, § 33-402. Sale of Alcoholic beverages without a license, § 25-109.

Definition of District, see note under § 22-109.

Chapter 16.—GAME AND FISH LAWS

Sec.

22-1628. Commissioners' authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

22-1630. Seizure of hunting and fishing equipment by police officers—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

22-1632. Delegation of functions by Secretary of Interior and Commissioners—Commissioners authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioners" and "Secretary of Interior" for purposes of chapter.

22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

§ 22-1601. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

Section dealt with the prohibition and control of net fishing in the Potomac River.

§ 22-1602. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

Section controlled the catching and killing of bass.

§ 22-1603. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (e).

This section prohibited the sale of bass.

§ 22-1604. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

This section regulated the sale and possession of shad or herring.

§ 22-1605. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

This section regulated the sale of small striped bass.

§ 22-1606. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

Section prohibited use of explosives and drugs in fishing.

§ 22-1607. Superseded. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7.

COMPILER'S NOTE

Section 8 of act of August 23, 1958, Pub. L. 85-730, repealed the entire chapter relating to game and fish laws and enacted new laws as provided by sections 1 to 6 of the act. These new laws are classified to section 22-1628 to 22-1633. Section 7 of the act, however, did not repeal the penalty provisions of this section, but instead amended the same to read as now set out in section 22-1703a. Since, however, the new game and fish laws, the act of August 23, 1958, by section 4 thereof provides its own penalty provisions, this section is obviously superseded by section 4 (22-1631).

§ 22-1608. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a).

Section dealt with confiscation of fishing equipment used in violation of law.

§ 22-1609. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with the sale and possession of woodcocks.

§ 22-1610. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with sale and exposition of squirrels and rabbits.

§ 22-1611. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with sale and possession of wild ducks, wild geese and the like.

§ 22-1612. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with sale or possession of certain game birds.

§ 22-1613. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with sale or possession of deer meat.

§ 22-1614. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with wild birds and robbing or destroying nests.

§ 22-1615. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section related to trapping, netting, etc., of wild birds—possession of devices for that purpose.

§ 22-1616. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section related to inspection of premises to detect violation of game laws.

§ 22-1617. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section dealt with trespassing for purposes of hunting.

§ 22-1618. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section related to shooting or having guns in possession on a Sunday.

§ 22-1619. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section related to killing or capturing game beyond District jurisdiction.

§ 22-1620. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (b).

Section related to compensation for persons securing convictions under game laws.

§ 22-1621. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (c).

Section dealt with killing of game birds and permits therefor.

§ 22-1622. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (c).

Section dealt with hunting of squirrels, chipmunks and rabbits without a permit.

§ 22-1623. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (c).

Section dealt with killing of English sparrow or wild animal suffering from disease or injury.

§ 22-1624. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (c).

Section dealt with hunting or disbursing of ducks, geese and waterfowl.

§ 22-1625. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (d).

Section prohibited sale, possession or purchase of certain types of birds.

§ 22-1626. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (d).

Section provided for issuance of license for certain scientific purposes.

§ 22-1627. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (d).

Section provided for sale of birds raised in captivity or for propagation.

§ 22-1628. Commissioners' authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

The Commissioners are authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession and sale of wild animals in the District: *Provided*, That nothing herein contained shall authorize the Commissioners to impose any requirement for a fishing license or fee of any nature whatsoever: *Provided further*, That nothing herein contained shall authorize the Commissioners to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U. S. C. 703—711) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior: *And pro-*

vided further, That nothing herein contained shall authorize the Commissioners to prohibit, restrict, regulate or control the sale or possession of wild animals taken legally in any State, Territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 1.)

EFFECTIVE DATE

Section 9 of the act of August 23, 1958, cited to text, makes the act effective 180 days following the approval thereof (Feb. 19, 1959).

§ 22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Authorized officers and employees of the Government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Commissioners under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall or cold-storage plant. No person shall refuse to permit any such inspection. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 2.)

§ 22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Commissioners. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the Commissioners.

(b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of

the court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 3.)

§ 22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than \$300 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4.)

§ 22-1632. Delegation of functions by Secretary of Interior and Commissioners—Commissioners authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioners" and "Secretary of Interior" for purposes of chapter.

(a) The Secretary of the Interior and the Commissioners, respectively, are authorized to delegate any of the functions to be performed by them under the authority of this chapter.

(b) The Commissioners are authorized to make such regulations as may be necessary to carry out the purpose of this chapter: *Provided*, That any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under his administrative jurisdiction.

(c) As used in this chapter the word "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or his designated agent or agents. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 5.)

§ 22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

Nothing in this chapter or in any regulation promulgated by the Commissioners under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish and wildlife on the land and waters in the District of Columbia under his administrative jurisdiction. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 6.)

Chapter 17.—HARBOR REGULATIONS

Sec.

22-1703a. Penalties for violation of section 22-1703.

§ 22-1701 [6:304]. Harbor regulations—Authority vested in Commissioners to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 2.

§ 22-1703 [6:306]. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 901.)

AMENDMENTS

Section 902 of the act of March 3, 1901, which was formerly set out as the second sentence in this section was amended by the act of August 23, 1958, Pub. L. 85-730, to read as set out in section 22-1703a. See note under section 22-1703a.

§ 22-1703a. Penalties for violation of section 22-1703.

Any person who shall violate any provision of the preceding section shall for each such offense be fined not more than \$300 or imprisoned not more than ninety days, or both. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7.)

AMENDMENTS

Section 7 of the act of August 23, 1958, cited to text, amends section 902 of the act of March 3, 1901, 31 Stat. 1336, to read as above set out. Section 902 of the act of March 3, 1901, was formerly classified as a part of section 22-1703. For the sake of clarity the amended section is set out as a separate section in the code.

EFFECTIVE DATE OF AMENDMENT

Section 9 of the act of August 23, 1958, cited to text, makes the amendment effective 180 days following approval thereof (Feb. 19, 1959).

Chapter 18.—HOUSEBREAKING

§ 22-1801 [6:55]. Definition and penalty.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 99 U. S. App. D. C. 288, 239 F. 2d 451).

ADMISSIBILITY OF EVIDENCE

Where, in prosecution for housebreaking, no trial objection was made to certain evidence, Court of Appeals was not required to decide question of its admissibility, and in view of character of the evidence, would not do so in its discretion. *Lawson v. United States* (1957, 101 U. S. App. D. C. 332, 248 F. 2d 655).

ARREST AND SEARCH

Police officers, who suspected defendant of having broken into and robbed drugstore, were entitled to ring defendant's doorbell and inquire concerning his whereabouts, and their observation, while awaiting admittance to defendant's house, of bottles and cigarettes, which apparently had been stolen from drugstore and which were lying in vicinity of porch, did not constitute a "search". *Ellison v. United States* (1953, 93 U. S. App. D. C. 1, 206 F. 2d 476).

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Id.*

Police officers, who suspected defendant of having broken into and robbed drugstore, were entitled to ring defendant's doorbell and inquire concerning his whereabouts, and their observation, while awaiting admittance to defendant's house, of bottles and cigarettes, which apparently had been stolen from drugstore and which were lying in vicinity of porch, did not constitute a "search". *Id.*

ARREST WITHOUT WARRANT

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defendant being held under such arrest. *R. C. Scott, Jr. v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

MAXIMUM SENTENCE

Where general sentence imposed upon accused, who was charged under two count indictment with housebreaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 94 U. S. App. D. C. 267, 215 F. 2d 678).

MODIFICATION OF JUDGMENT

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Willis C. Washington v. United States* (1956, 98 U. S. App. D. C. 100, 232 F. 2d 357).

PREJUDICIAL ERROR

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 101 U. S. App. D. C. 177, 247 F. 2d 583).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence

against him. *Leroy Payton v. United States* (1955, 96 U. S. App. D. C. 1, 222 F. 2d 794).

PROSECUTOR'S REMARKS TO JURY

In prosecution for housebreaking, fact that prosecutor remarked to jury, in his summation, about defendant's failure to call certain witnesses, did not mean that trial court was required to instruct jury that it was not the duty of defendant to make any defense, and trial court did not err in refusing such a requested instruction. *Lawson v. United States* (1957, 101 U. S. App. D. C. 332, 248 F. 2d 655).

SEARCH WITHOUT WARRANT

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 89 U. S. App. D. C. 64, 190 F. 2d 649).

SUBSTANTIAL RIGHTS

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 98 U. S. App. D. C. 250, 234 F. 2d 685).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Roosevelt Brady v. United States of America* (1955, 96 U. S. App. D. C. 256, 225 F. 2d 551).

UNEXPLAINED POSSESSION OF STOLEN PROPERTY

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Wright v. United States* (1951, 89 U. S. App. D. C. 70, 189 F. 2d 699).

The unexplained exclusive possession of stolen property, shortly after the commission of larceny, does not raise presumption of law that defendant committed larceny, but it may satisfy jury and warrant verdict of guilty. *Id.*

WAIVER OF LUNACY HEARING

In prosecution for housebreaking, trial court's acceptance of waiver of pretrial lunacy hearing from defendant who stated he needed hospitalization and whose testimony showed confusion was error notwithstanding certification from acting superintendent of mental hospital that defendant was mentally competent to stand trial. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

Chapter 20.—INDECENT PUBLICATIONS

§ 22-2001 [6: 174]. Definition and penalty.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of \$300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Jacob Morris Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed

for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

ILLEGAL SEARCH

Affidavit, which revealed that informer, who had learned that pornographic material was being sold, saw third party pass through entrance which might have led to two stores and possibly to apartments above, and that third party returned with pornographic material purchased for informer, affidavit was not sufficient to show probable cause for issuance of search warrant, and resulting search of one of the stores was illegal, and the evidence procured should have been suppressed in subsequent prosecution of store operator for possessing, with intent to sell, lewd and obscene photographs, films, and literature. *D. Lerner and B. Lerner v. United States* (D.C. Mun. App. 1959, 151 A.2d 184).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201 [6: 60]. Grand larceny.

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 826; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—The act of June 29, 1953, increased the value to \$100.

NOTES TO DECISIONS

ACCOMPLICE

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia, evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 94 U. S. App. D. C. 219, 215 F. 2d 35).

CHOICE OF VERDICTS

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (1957, 149 F. Supp. 409).

CONCURRENT SENTENCES

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Wilbert G. Evans v. United States* (1956, 98 U. S. App. D. C. 122, 232 F. 2d 379).

DEFENSE

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobiles must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that

defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, including intent, beyond reasonable doubt. *Wilbert G. Evans v. United States* (1956, 98 U. S. App. D. C. 122, 232 F. 2d 379).

DEFINITION OF SEIZURE

Where officers had right and duty to confront and interrogate suspect in investigation of murder, and suspect on alighting from automobile dropped handkerchief containing jewelry into street, action of officers in taking jewelry was not "seizure" in legal sense and same was competent evidence in larceny prosecution and trial court properly refused to suppress it as evidence. *Kenneth I. Lee v. United States of America* (1954, 95 U. S. App. D. C. 156, 221 F. 2d 29).

DIRECTED VERDICT

In grand larceny prosecution, court properly refused to direct verdict for the defendant. *Graham v. United States* (1950, 88 U. S. App. D. C. 129, 187 F. 2d 87, certiorari denied 341 U. S. 920, 71 S. Ct. 741).

EVIDENCE

Evidence justified larceny conviction of an accused whose alleged confederate removed carton of spark plugs from store and placed carton in their automobile while accused was in store notwithstanding no property was marked for or offered in evidence at trial. *Foster v. United States* (1954, 94 U. S. App. D. C. 83, 212 F. 2d 249).

INSTRUCTIONS

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Wheeler v. United States* (1951, 89 U. S. App. D. C. 143, 190 F. 2d 663).

In prosecution for grand larceny, court's charge as a whole relating to larceny was an adequate statement of law applicable to the evidence and was fair to defendant. *Graham v. United States* (1950, 88 U. S. App. D. C. 129, 187 F. 2d 87, certiorari denied 341 U. S. 920, 71 S. Ct. 741).

In prosecution for grand larceny, defendant's general request, made prior to rendition of charge, that court charge that if prosecuting witness gave defendant money intending that he may be able to pass title to it, there was no larceny, was an incorrect statement of law. *Id.*

INTENT

Evidence, in prosecution for theft and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 94 U. S. App. D. C. 321, 215 F. 2d 334).

LARCENY BY FRAUD

Where the victim was induced by artifice to part with possession of property but clearly did not intend to pass title, subsequent conversion by the swindlers completed the crime of larceny by trick. *Ballard v. United States* (1956, 99 U. S. App. D. C. 101, 237 F. 2d 582).

Under the statute making it a crime to feloniously take and carry away anything of the value of \$50 or upwards, one who obtains money from another upon representation that he will perform certain services therewith for the latter intending at the time to convert the money and actually converting it to his own use is guilty of larceny. *Graham v. United States* (1950, 88 U. S. App. D. C. 129, 187 F. 2d 87, certiorari denied 341 U. S. 920, 71 S. Ct. 741).

MAXIMUM SENTENCE

Where general sentence imposed upon accused, who was charged under two count indictment with house-

breaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 94 U. S. App. D. C. 267, 215 F. 2d 678).

PREJUDICIAL ERROR

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 101 U. S. App. D. C. 177, 247 F. 2d 583).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence against him. *Leroy Payton v. United States* (1955, 96 U. S. App. D. C. 1, 222 F. 2d 794).

SEARCH WITHOUT WARRANT

Where jewelry had been taken from scene of murder and officers were informed that a man was selling some jewelry on a street, they had right and duty to approach, confront and interrogate him though they had no warrant. *Kenneth I. Lee v. United States of America* (1954, 95 U. S. App. D. C. 156, 221 F. 2d 29).

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 89 U. S. App. D. C. 64, 190 F. 2d 649).

SUBSTANTIAL RIGHTS

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 98 U. S. App. D. C. 250, 234 F. 2d 685).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Roosevelt Brady v. United States of America* (1955, 96 U. S. App. D. C. 251, 225 F. 2d 551).

TESTIMONY OF ACCOMPLICE

In prosecution for grand larceny, where judge instructed jury that the testimony of an accomplice should be received with care and scrutinized with caution, there was no error in refusing to charge that conviction could not rest on the uncorroborated testimony of an accomplice. *Ballard v. United States* (1956, 99 U. S. App. D. C. 101, 237 F. 2d 582).

UNEXPLAINED POSSESSION OF STOLEN PROPERTY

The unexplained exclusive possession of stolen property, shortly after the commission of larceny, does not raise presumption of law that defendant committed larceny, but it may satisfy jury and warrant verdict of guilty. *Wright v. United States* (1951, 89 U. S. App. D. C. 70, 189 F. 2d 699).

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Id.*

UNLAWFUL SEARCH AND SEIZURE

Stolen guns, which were obtained by officers from defendant's apartment and automobile as result of unlawful search and seizure in violation of the Fourth Amendment to the Constitution, were inadmissible in grand larceny prosecution. *Michael Lee v. United States* (1956, 98 U. S. App. D. C. 97, 232 F. 2d 354).

§ 22-2202 [6:61]. Petit larceny—Order of restitution.

Whoever shall feloniously take and carry away any property of value of less than \$100, including things savoring of the realty, shall be fined not more than \$200 or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 827; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—The act of June 29, 1953, increased the value to \$100.

NOTES TO DECISIONS

ADMISSION OF EVIDENCE

In prosecution of maid for stealing currency from room in rooming house, admission of officer's testimony that from his investigation he learned that only maid and complaining witness had keys to room did not result in prejudice to maid, where true facts relating to keys were brought to light by other evidence. *Thelma L. Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

ARREST AND SEARCH

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Ellison v. United States* (1953, 93 U. S. App. D. C. 1, 206 F. 2d 476).

ARREST WITHOUT WARRANT

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defendant was being held under such arrest. *R. C. Scott, Jr. v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

CONCURRENT SENTENCES

Where defendant was convicted on all counts of a four count indictment charging him in one count with bribery, and in three counts with petit larceny, and sentences on the petit larceny counts ran concurrently with the sentence on the bribery count, and did not exceed it, validity of the bribery conviction supported the judgment. *J. H. Green v. United States* (1959, 105 U.S. App. D.C. 342, 267 F. 2d 619).

EVIDENCE

Where detective arranged to meet defendant in pool-room and upon meeting him suggested that they go to precinct for their discussion and while at station house he asked defendant to see any money he had on his person and defendant voluntarily produced a dollar bill which was found to have serial number corresponding with serial number on a bill stolen the night before from a pharmacy, whereupon he was placed under arrest, one

dollar bill was properly admitted in subsequent prosecution for petit larceny. *B. Jackson v. United States* (D.C. Mun. App. 1958, 146 A. 2d 577).

In prosecution for petit larceny involving theft of currency from a pharmacy formerly employing defendant, on whose person was found a one dollar bill containing a serial number corresponding with one of serial numbers of currency that had been stolen, two one dollar bills taken from poolroom cash register where defendant had just recently made change, having serial numbers corresponding with two bills of stolen currency, were admissible although bills were not directly connected with defendant and standing alone would be insufficient to support a conviction. *Id.*

Evidence was sufficient to sustain a conviction for petit larceny. *Id.*

PREJUDICIAL ERROR

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 101 U. S. App. D. C. 177, 247 F. 2d 583).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Roosevelt Brady v. United States of America* (1955, 96 U. S. App. D. C. 251, 225 F. 2d 551).

Evidence was sufficient to sustain conviction of stealing currency from locked brief case of occupant of rooming house where defendant was working as maid. *Thelma L. Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

VALUE OF PROPERTY

In prosecution under petit larceny statute covering thefts of property of value of less than \$100, defendant was not prejudiced by proof that she stole more than \$100. *Thelma L. Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

§ 22-2203 [6: 98]. Larceny after trust.

That if any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person, so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is \$100 or more, be punished by imprisonment for not less than one nor more than ten years, or by a fine of not more than \$1,000, or both; and where the value of the thing so converted is less than \$100 he shall be punished by imprisonment for not more than one year or by a fine of not more than \$500 or both: *Provided*, That nothing contained in this section shall be construed to alter or repeal any section contained in this chapter. (Mar. 3, 1901, ch. 854, § 851b, as added Mar. 3, 1913, 37 Stat. 727, ch. 108; Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—Act of June 29, 1953, increased the value from \$50 to \$100.

§ 22-2204 [6: 62]. Unauthorized use of vehicles.

NOTES TO DECISIONS

ACCOMPLICE

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia,

evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 94 U. S. App. D. C. 219, 215 F. 2d 35).

AIDING AND ABETTING

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *C. R. Allen v. United States* (1958, 103 U.S. App. D.C. 184, 257 F. 2d 188).

CONCURRENT SENTENCES

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Wilbert G. Evans v. United States* (1956, 98 U. S. App. D. C. 122, 232 F. 2d 379).

DEFENSE

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobile must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, including intent, beyond reasonable doubt. *Wilbert G. Evans v. United States* (1956, 98 U. S. App. D. C. 122, 232 F. 2d 379).

EVIDENCE

Evidence was sufficient to sustain conviction for unauthorized use of an automobile. *C. R. Allen v. United States* (1958, 103 U.S. App. D.C. 184, 257 F. 2d 188).

INTENT

Evidence, in prosecution for theft, and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 94 U. S. App. D. C. 321, 215 F. 2d 334).

QUESTION FOR JURY

Evidence whether defendant who was found staggering with bleeding forehead from alley in vicinity of damaged automobile in which were found pieces of glass which appeared to fit perfectly the pieces in broken lens of spectacles found in defendant's pocket, was guilty of unauthorized use of motor vehicle, was for jury. *Patalas v. United States* (1950, 87 U. S. App. D. C. 379, 185 F. 2d 507).

§ 22-2204a. Theft from vehicles.

Whoever, after March 7, 1942, and in any period during which any restrictions on the sale or use of any of the articles hereinafter referred to are in effect pursuant to any law of the United States, shall feloniously take and carry away any oil or gasoline, or any other lubricant or fuel; or any antifreeze mixture, compound, or solution; or any tire, tire casing, inner tube, or rim; or any wheel, tire chain, battery, or other part, equipment, or accessory,

of the value of less than \$100, being then and there in, on, part of, or attached to any vehicle in the District of Columbia, shall suffer imprisonment for not more than three years: *Provided*, That nothing contained in this section shall be construed to affect the offense of grand larceny as defined by existing law. (Mar. 3, 1901, ch. 854, § 826c, as added Mar. 7, 1942, 56 Stat. 143, ch. 165; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENTS

1953—Act of June 29, 1953, increased the value to \$100.

§ 22-2205 [6: 64]. Receiving stolen goods.

Any person who shall, with intent to defraud, receive or buy anything of value which shall have been stolen or obtained by robbery, knowing or having cause to believe the same to be so stolen or so obtained by robbery, if the thing or things received or bought shall be of the value of \$100 or upward, shall be imprisoned for not less than one year nor more than ten years; or if the value of the thing or things so received or bought be less than \$100, shall be fined not more than \$500 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 829; June 29, 1953, 67 Stat. 98, ch. 159, § 213.)

AMENDMENTS

1953—Act of June 29, 1953, amended section so as to cover the receipt of stolen goods when a person has cause to believe the goods are stolen, and also expanded the provision dealing with receipt of goods with intent to defraud to include any person. Previously the section had concerned the receipt or purchase of anything of value with intent to defraud the owner with knowledge that it had been stolen. The penalty provisions were changed to provide for a lesser penalty for goods under \$100 in value. The previous provision had been a valuation of \$35. The maximum sentence for the lesser offenses was reduced from 2 years to 1 year and a provision was made for a fine in the case of the lesser offenses.

NOTES TO DECISIONS

ARREST

Where officers, who knew that furniture had been stolen and who had information linking accused to the crime, went to accused's second-hand furniture store and observed articles in show windows similar to those which had been stolen, asked accused for records required to be kept by second-hand dealers, asked to be shown more of same type of furniture which accused denied having, and looked around premises without objection by accused and found five new chairs hidden beneath old furniture, arrest without warrant was legal. *McQuaid v. United States* (1952, 91 U. S. App. D. C. 229, 198 F. 2d 987).

CORROBORATION

In prosecution for receiving stolen goods, testimony that defendant had goods in his possession shortly after theft thereof and retained such possession while attempting with others to sell them was sufficient corroborative evidence to support his admissions that he received goods and knew they had been stolen. *Inman v. United States* (1957, 100 U. S. App. D. C. 150, 243 F. 2d 256).

EVIDENCE

In prosecution for receiving stolen goods, whether evidence supporting defendant's admissions of his receipt of goods and knowledge that they were stolen would have supported conviction of larceny is immaterial, as one technically guilty of larceny, but not present when it occurred, may be convicted of receiving stolen goods. *Inman v. United States* (1957, 100 U. S. App. D. C. 150, 243 F. 2d 256).

EVIDENCE, SUFFICIENCY

In prosecution for knowingly receiving stolen goods, evidence relating to identity, ownership, and value of goods sustained conviction. *McQuaid v. United States* (1952, 91 U. S. App. D. C. 229, 198 F. 2d 987).

INSTRUCTIONS

In prosecution for knowingly receiving stolen property, instruction that it was not necessary to find that accused knew that property was stolen specifically from company named in indictment was not error where other instructions were given on theory that identification and ownership were essential elements of the crime and further instructions were not requested and there were no objections to instructions given. *McQuaid v. United States* (1952, 91 U. S. App. D. C. 229, 198 F. 2d 987).

In prosecution for receiving stolen goods of the value of \$35 or more, jury should have been instructed to find the value of the goods, and not merely that the goods were of some value, even though defense counsel did not request such instruction, and even though indictment charged that the stolen goods had a value of about \$1,115.01. *McQuaid v. United States* (1951, 90 U. S. App. D. C. 59, 193 F. 2d 696).

PREJUDICIAL ERROR

Failure of court to charge in prosecution for receiving stolen goods of the value of about \$1,115.01, that the jury should find the value of the stolen goods was not prejudicial error, where sentence imposed on defendant was not for the more serious offense of receiving stolen goods of the value of \$35 or more, but for receiving goods of a value of less than \$35 and where defendant wanted new trial, not resentence. *McQuaid v. United States* (1951, 90 U. S. App. D. C. 59, 193 F. 2d 696).

UNEXPLAINED POSSESSION

A person's unexplained possession of goods known by him to have been stolen is a forceful circumstance supporting his admissions of receipt of goods to such extent as to justify jury in concluding that admissions were true. *Inman v. United States* (1957, 100 U. S. App. D. C. 150, 243 F. 2d 256).

§ 22-2206 [6: 65]. Stealing property of District of Columbia.

NOTES TO DECISIONS

ABUSE OF DISCRETION

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 99 U. S. App. D. C. 288, 239 F. 2d 451).

§ 22-2208 [6: 67]. Destroying stolen property.

Whoever shall maliciously destroy anything of value of the amount or value of \$100 or upward which shall have been stolen, knowing the same to have been stolen, shall suffer imprisonment for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 828; June 29, 1953, 67 Stat. 99, ch. 159, § 215.)

AMENDMENT

1953—Act of June 29, 1953, increased the valuation from \$35 to \$100.

Chapter 23.—LIBEL—BLACKMAIL

§ 22-2305 [6: 42]. Blackmail.

NOTES TO DECISIONS

INTENT TO EXPORT

In blackmail prosecution, evidence sustained finding of intent to extort. *Connor v. United States* (1952, 91 U. S. App. D. C. 417, 200 F. 2d 750).

RECORD ON APPEAL

Where no objection had been made during trial to admission of evidence, and proceedings with respect to pretrial motion, other than written motion and order denying it, were not part of record on appeal, reviewing court could not sustain defendant's contention that trial court had erred in denying his pretrial motion to suppress certain evidence. *H. E. Wade, Jr. v. United States* (1958, 104 U.S. App. D.C. 135, 259 F. 2d 950).

Chapter 24.—MURDER—MANSLAUGHTER

§ 22-2401 [6: 21]. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

NOTES TO DECISIONS

CONDUCT OF PROSECUTOR

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self defense or the degree of homicide. *R. Belton v. United States* (1958, 104 U.S. App. D.C. 81, 259 F. 2d 811).

CONFESSIONS

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, evidence sustained admission in evidence of defendant's written confession, subject to final determination by jury, upon all evidence, as to its voluntary nature. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

CONSTRUCTION

Word "purposely" as used in statute dealing with first-degree murder, is synonymous with "intentionally", and does not refer to the purpose of, or the intention in, the killing. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

CORPUS DELICTI

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, without considering defendant's written confession, evidence was sufficient to prove corpus delicti. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

DOUBLE JEOPARDY

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221, reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

EVIDENCE

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 95 U. S. App. D. C. 45, 218 F. 2d 856).

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own

intent. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, ruling that statement of witness that he told defendant that lie detector indicated that defendant was lying, would not be admitted as evidence of any alleged lying of defendant, but merely as evidence bearing upon question whether defendant's confession was, in fact, voluntary, was correct. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, without considering defendant's written confession, evidence was sufficient to justify submission of case to jury and to support verdict of guilty. *Id.*

EXTENT OF GUILT UNDER INDICTMENT

Under indictment charging first degree murder done during perpetration or attempted perpetration of rape, mayhem, robbery, kidnapping, or housebreaking while armed with or using a dangerous weapon, defendant may, if evidence warrants, be found guilty of the necessarily included offense of second degree murder. *Green v. United States* (1955, 95 U. S. App. D. C. 45, 218 F. 2d 856).

GROUND FOR IMPEACHMENT

Though the statute allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found. *R. Belton v. United States* (1958, 104 U.S. App. D.C. 81, 259 F. 2d 811).

INSTRUCTIONS

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction attempting to distinguish between "mental disease" and "mental disorder", read in light of explanation offered by record, could have led jury to conclude defendant could be acquitted by reason of insanity only if defendant suffered from abnormality due to physical deterioration of or injury to brain, and was erroneous and prejudicial to defendant. *Stewart v. United States* (1954, 94 U. S. App. D. C. 293, 214 F. 2d 879).

Conviction for first degree murder committed in robbing a grocery store would be reversed by Court of Appeals for District of Columbia where given instruction prejudicial to defendant was fatally defective, regardless of whether errors in instruction were properly preserved. *Id.*

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction stating that a psychopath is not insane within meaning of law, and that a psychopath is person of low intelligence, although expert testimony was that a psychopath was usually of superior intelligence, was erroneous as court invasion of combined functions of expert witness and jury by assertions treating factual issues as already settled by testimony or law. *Id.*

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first degree murder, wherein defendant interposed defense that he and companion, though armed with pistols, had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of American people conditions in Puerto Rico, court properly charged jury that defendant's testimony as to conditions in Puerto Rico had nothing to do with the case, over objection of defendant that such conditions were relevant and material to issue of his intent and materially responsive to prosecutor's claim of motive. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

INSTRUCTIONS TO JURY

Where, in arson and murder prosecution, all testimony as to what occurred in burning house pointed to first degree murder only, giving of second degree murder instruction was error. *Green v. United States* (1955, 95 U. S. App. D. C. 45, 218 F. 2d 856).

INTENT

Under District of Columbia statute, murder committed in course of robbing a grocery store is first degree murder although there is no premeditation or intent or desire to kill. *Stewart v. United States* (1954, 94 U. S. App. D. C. 293, 214 F. 2d 879).

Intent to kill must always be proved in first-degree murder prosecution under first clause of local statute in order to convict, but motive for the killing is not always a material element in defense. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

MENTAL CAPACITY

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, it was jury's function to determine from all evidence, including expert testimony, whether defendant suffered from abnormal mental condition and whether nature and extent of condition from which defendant suffered relieved defendant of criminal responsibility under then prevailing standards. *Stewart v. United States* (1954, 94 U. S. App. D. C. 293, 214 F. 2d 879).

MOTIVE

If fact of killing by an accused is in issue, prosecutor is permitted as part of his effort to prove that accused committed the act, to prove that accused had a motive for killing the deceased, and accused as part of his effort to prove that he did not commit the act, is permitted to prove that he had no motive for killing the deceased. *Collazo v. United States* (1952, 90 U. S. App. D. C. 241, 196 F. 2d 573).

If killing is intended by accused and none of the established legal excuses for the killing is pleaded, the motive of the killer is wholly immaterial. *Id.*

MURDER—DURING ROBBERY

Fact that a robbery is being perpetrated by one who killed another, without purpose to do so and without deliberate or premeditated malice, supplies the element necessary to constitute the crime of first degree murder under District of Columbia murder-during-robbery statute. Under District of Columbia murder-during-robbery statute, the crime of robbery is still in progress so long as the essential ingredient of asportation continues. *Robert E. Carter v. United States of America* (1955, 96 U. S. App. D. C. 40, 223 F. 2d 332).

PROLONGATION OF JEOPARDY

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221; reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

SUFFICIENCY OF EVIDENCE

In prosecution under District of Columbia murder-during-robbery statute, for death of policeman whom defendant shot and killed while policeman, who began pursuit some minutes after robbery, was pursuing defendant, evidence whether asportation was continuing was sufficient to sustain conviction. *Robert E. Carter v. United States of America* (1955, 96 U. S. App. D. C. 40, 223 F. 2d 332).

Evidence was sufficient to sustain conviction for murder in first degree. *Pritchett v. United States* (1950, 87 U.S. App. D.C. 374, 185 F. 2d 438, certiorari denied 341 U.S. 905, 71 S. Ct. 608).

§ 22-2403 [6:23]. Murder in second degree.

NOTES TO DECISIONS

ACTS CONSTITUTING MANSLAUGHTER

Where defendant struck a person who fell to the sidewalk and whose head hit the concrete and where several days later such person died as a result of the head in-

juries, the defendant was guilty of manslaughter. *A. C. Wililams v. United States* (1959, 105 U.S. App. D.C. 348, 267 F. 2d 625).

ADMISSIBILITY OF EVIDENCE

In prosecution of defendant for killing of his wife's paramour who had engaged in improper relations with defendant's wife, wherein defendant asserted that he was of unsound mind at time of commission of the homicide in that he had "blacked out" at time of shooting, and that his state of mind was due to destruction of sanctity of his home, questioning of defendant about his relations with another woman was not error even though it might incidentally indicate commission of other crimes, since the evidence was relevant and material to defendant's attitude towards his own wife and home. *Bell v. United States* (1953, 93 U. S. App. D. C. 173, 210 F. 2d 711).

GENERALLY

"Murder in the second degree" is the unlawful killing of another, where there is not a premeditated design and plan to effect death, but where there is malice aforethought. *Fryer v. United States* (1953, 93 U. S. App. D. C. 34, 207 F. 2d 134).

INSTRUCTIONS TO JURY

In prosecution for first degree murder, instruction to jury that second degree murder is killing with malice aforethought, but without intent to kill, was erroneous as to such limitation. *Kitchen v. United States* (1953, 92 U. S. App. D. C. 382, 205 F. 2d 720).

INTERVENING CAUSE OF DEATH

Evidence sustained conviction of manslaughter notwithstanding defense of an intervening cause of death. *C. T. Ross v. United States* (1959, 105 U.S. App. D.C. 341, 267 F. 2d 618).

MALICE

"Malice" is a state of mind showing a heart fatally bent on mischief and unmindful of social duties and may also be defined as a condition of mind that prompts a person to do an injurious act wilfully to the injury of another; and malice may be implied or inferred from the act committed, or it may be expressed. *Fryer v. United States* (1953, 93 U. S. App. D. C. 34, 207 F. 2d 134).

PREMEDITATION

An intentional killing that is not premeditated and not connected with another crime is "murder in the second degree". *Kitchen v. United States* (1953, 92 U. S. App. D. C. 382, 205 F. 2d 720).

§ 22-2404 [6:24]. Punishment for murder in first and second degrees.

NOTES TO DECISIONS

DOUBLE JEOPARDY

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221; reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

PROLONGATION OF JEOPARDY

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Green v. United States* (1957, 355 U. S. 184, 78 S. Ct. 221; reversing 98 U. S. App. D. C. 413, 236 F. 2d 708).

§ 22-2405 [6: 25]. Punishment for manslaughter.

NOTES TO DECISIONS

MANSLAUGHTER, DEFINITION

"Manslaughter" is the unlawful killing of a human being without malice. *Fryer v. United States* (1953, 93 U. S. App. D. C. 34, 207 F. 2d 134).

Chapter 25.—PERJURY

§ 22-2501 [6: 31]. Perjury—Subornation of perjury.

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE

On appeal from conviction for perjury before congressional committee, record established that offer actually made by defendant had been of remaining portions of his own testimony before committee rather than, as contended, that of proceedings immediately preceding his own testimony, and therefore claim of error in rejecting offer of proceedings immediately preceding defendant's testimony before committee could not be upheld. *Christoffel v. United States* (1952, 91 U. S. App. D. C. 241, 200 F. 2d 734).

Submission of illegally obtained evidence to a previous Grand Jury, which did not indict defendant, would not necessarily raise an inference that the same or similar unlawful evidence was presented to a Grand Jury which was impaneled two years later and returned an indictment charging defendant with perjury. *United States v. Weinberg* (1952, 108 F. Supp. 567).

BELIEF AS TO FALSITY OF TESTIMONY

To return a verdict of guilty on a charge of perjury, jury must be convinced beyond reasonable doubt not only that accused testified falsely but that he did not, at the time, believe his testimony to be true. *Young v. United States* (1954, 94 U. S. App. D. C. 54, 212 F. 2d 236).

Generally, a belief as to falsity of testimony may be inferred by jury in perjury prosecution from proof of falsity itself, although in some cases this may not be so, as, for instance, where testimony concerns a triviality or an occurrence of long before. *Id.*

BILL OF PARTICULARS

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness testified falsely when he testified that his conference with Soviet Ambassador to the United States had taken place after the Hitler invasion of the Soviet Union was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government intended to rely to show that the meeting with Ambassador was after the Hitler invasion. *United States v. Lattimore* (1953, 112 F. Supp. 507).

CONSTITUTIONALITY

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because it restricted freedom of belief and expression in violation of the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech, or of the press. *United States v. Lattimore* (1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness was lying when he stated that neither he nor anyone in his party made any pre-arrangements with the Communist Party in order to get into Yenan, China was invalid for failure to meet requirements of the Sixth Amendment to the federal Constitution which protects an accused in right to be informed of the nature and cause of the accusation against him and Federal Rule of Criminal Procedure which requires that indictment shall be a plain, concise, and

definite written statement of essential facts constituting offense charged. *Id.*

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *Id.*

CORROBORATION

Perjury cannot be proved by uncorroborated testimony of one witness, since falsity of one person's oath cannot be established by another person's oath alone. *Joseph Doto v. United States of America* (1955, 96 U. S. App. D. C. 17, 223 F. 2d 309).

EVIDENCE

In order to obtain a conviction for perjury of witness who allegedly testified falsely before a Subcommittee of the Senate Judiciary Committee, the government was required to prove that question, which witness allegedly answered untruthfully, was material to the investigation being carried on by the Subcommittee. *United States v. Lattimore* (1954, 94 U. S. App. D. C. 268, 215 F. 2d 847).

INDICTMENT

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests was void for vagueness. *United States v. Lattimore* (1954, 94 U. S. App. D. C. 268, 215 F. 2d 847).

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that he did not "know" that certain contributor to magazine edited by witness was a Communist was not, because of the use of the word "know", invalid, on ground of vagueness. *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that, apart from Russian contributions, he never published, while editor of magazine, an article by a person whom he knew to be a Communist was sufficiently certain and involved a valid and proper inquiry. *D. C. Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a "Communist" was not invalid, on ground of vagueness, because of the use of the word "Communist." *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness testified falsely when he gave a negative answer to question whether it was necessary, before he went beyond line of demarcation between Nationalist China and Communist China, to have permission of Communist authorities and when he testified that neither he nor any one in his party made any prearrangement with the Communist Party in order to get into Communist China was invalid because of a fatal variance in its terms. *Id.*

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (1953, 113 F. Supp. 20).

INSTRUCTIONS

Instruction that "perjury" is simply the giving of false testimony under oath, testimony that a party does not

believe to be true, and that if he testifies before a competent tribunal as to a fact which is false, and he does not believe it to be true, then that is "perjury", was sufficient, though court did not in terms define the word "wilfully". *Maragon v. United States* (1951, 89 U.S. App. D.C. 349, 187 F. 2d 79, certiorari denied 341 U.S. 932, 71 S. Ct. 741).

ISSUE ON PRIOR APPEAL

Where, upon prior appeal, Court of Appeals had disposed of question as to whether perjury indictment could properly be drawn under perjury statute of District of Columbia rather than under federal perjury statute, and its ruling had been left undisturbed by Supreme Court when it reversed, Court of Appeals would not reopen question on appeal after second trial under same indictment. *Christoffel v. United States* (1952, 91 U. S. App. D. C. 241, 200 F. 2d 734).

MATERIALITY OF EVIDENCE

Where perjury prosecution was based upon alleged perjurious statement, which was made by defendant while testifying before the Senate Special Committee to Investigate Organized Crime in Interstate Commerce, that defendant was a United States citizen, question as to defendant's citizenship was material to inquiry which committee was authorized to make. *Joseph Doto v. United States of America* (1955, 96 U. S. App. D. C. 17, 223 F. 2d 309).

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States v. Lattimore* (1953, 112 F. Supp. 507).

NATURE OF

The word "wilfully" in a perjury statute means "knowingly" or "intentionally". *Maragon v. United States* (1950, 87 U. S. App. D. C. 349, 187 F. 2d 79, certiorari denied 341 U. S. 932, 71 S. Ct. 741).

PERJURY BEFORE CONGRESS

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a Communist was not defective, as a matter of law, on ground that question was not material to study being made by Subcommittee with reference to subversive activities of Communist agents. *United States v. Lattimore* (1954, 94 U. S. App. D. C. 268, 215 F. 2d 847).

In passing on motion to dismiss indictment charging that witness perjured himself before Subcommittee of the Senate Judiciary Committee, it was proper to draw from Subcommittee's hearings explanatory material necessary to an understanding of the terms and parts of the indictment, but it was not permissible to refer to the hearings for facts which might become issues on the pleas and which might be subject to dispute. *Id.*

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for perjury. *Joseph Doto v. United States of America* (1955, 96 U. S. App. D. C. 17, 223 F. 2d 309).

In a perjury prosecution the rule is that the uncorroborated oath of one witness is not enough to establish, for purposes of conviction of perjury, the falsity of sworn testimony, and it is not the rule that no person may be convicted of perjury unless the falsity of the statement made under oath is established by the testimony of two independent witnesses or by one witness and the corroborating facts and circumstances. *Maragon v. United States* (1950, 87 U. S. App. D. C. 349, 187 F. 2d 79, certiorari denied 341 U.S. 932, 71 S. Ct. 741).

Evidence sustained conviction of defendant for perjury for testifying under oath before Investigating Subcommittee of the Senate Committee on Expenditures in the Executive Departments that he had only one bank account. *Id.*

Chapter 27.—PROSTITUTION—PANDERING HOUSES OF PROSTITUTION

§ 22-2701 [6:177a]. Prostitution — Inviting for purposes of, prohibited.

That it shall not be lawful for any person to invite, entice, persuade, or to address for the purpose of inviting, enticing, or persuading, any person or persons sixteen years of age or over in the District of Columbia, for the purpose of prostitution, or any other immoral or lewd purpose, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 1; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 102; June 29, 1953, 67 Stat. 93, ch. 159, § 202.)

AMENDMENTS

1953—Act of June 29, 1953, amended the section so as to cover all places within the District whether public or private, and increased the maximum fine from \$100 to \$250.

NOTES TO DECISIONS

CHARACTER EVIDENCE

Character evidence alone is not determinative of guilt or innocence of an accused and at most it can be basis for inference by trier of facts that a person possessing good character would, in all probability and based on experience of human relations, not be guilty of crime charged. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

CONSTITUTIONALITY

The statute declaring it a crime "to invite, entice, persuade * * * any person * * * for purpose of prostitution," is not unconstitutional as setting up no ascertainable standard of guilt or so vague, indefinite and general as to violate rights of one accused of such offense under Fifth Amendment, but is clear in language and purpose, free of ambiguity, and lays down definite and easily understandable standard of criminal liability. *Hawkins v. United States* (D. C. Mun. App. 1954, 105 A. 2d 250).

CORROBORATION

In prosecution for soliciting for the purpose of prostitution, it was not necessary that testimony of the person solicited be corroborated. *G. Parker v. United States* (D. C. Mun. App. 1958, 143 A. 2d 98).

Evidence was sufficient to sustain conviction of soliciting for purpose of prostitution. *Id.*

Corroboration of testimony of witness for prosecution is not required in a case of solicitation for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

ELEMENTS OF ASSAULT

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

ENFORCEMENT

Enforcement of statute making it unlawful for any person to invite another to accompany him for lewd and immoral purpose must be with design to prevent offense, to prevent unwarranted irreparable destruction of reputations, and to prevent criminal offense of blackmail in connection with charge of verbal invitation, and it must not foster conditions or practices which make easy and encourage such offense. *Kelly v. United States* (1952, 90 U. S. App. D. C. 125, 194 F. 2d 150).

EVIDENCE

A conviction of soliciting for a lewd and immoral purpose may be based on uncorroborated testimony of one government witness. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

EVIDENCE, ADMISSIBILITY

In prosecution for statutory offense of unlawfully inviting another to accompany accused for lewd and immoral purpose, evidence of good character of accused is particularly applicable in that it is usually only defense, except word of accused, and should be considered by court. *Kelly v. United States* (1952, 90 U. S. App. D. C. 125, 194 F. 2d 150).

EVIDENCE, SUFFICIENCY

Evidence sustained conviction for soliciting for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

Evidence was insufficient to sustain conviction for unlawful invitation by accused to another to accompany accused for lewd and immoral purpose. *Kelly v. United States* (1952, 90 U. S. App. D. C. 125, 194 F. 2d 150).

Evidence justified conviction for soliciting a person for immoral or lewd purposes. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

Evidence justified conviction for addressing a person for immoral purposes. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

In prosecution for soliciting prostitution of any person sixteen years of age or older, lack of testimony as to age of police officers allegedly solicited by defendant did not entitle her to acquittal when officers were in court so that judge, sitting without jury, could use his senses and draw inferences as to their ages by his personal observation. *Cunningham v. United States* (D. C. Mun. App. 1952, 86 A. 2d 918).

Evidence justified finding that witnesses were solicited directly and personally by defendant and sustained conviction for soliciting prostitution. *Id.*

GOOD CHARACTER

In prosecution for soliciting a person for immoral or lewd purposes an acquittal is not required to follow whenever evidence of good character of accused is presented. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

HEARSAY

In prosecution for soliciting for prostitution, even if evidence of conversation between sailor to whom arresting officer had been talking and one of sailors walking behind defendant were hearsay and improperly admitted, error, if any, was not prejudicial where finding of guilt was based upon solicitation which occurred subsequently. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

PRESUMPTION OF INNOCENCE

In prosecution for addressing a person for immoral purposes, brought to court without a jury, record did not establish that accused was not afforded presumption of innocence. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

PRIOR RECORD

Defendant's honorable discharge from United States Army approximately five years before offense charged did not require defendant's acquittal of charge of soliciting for lewd and immoral purpose as a matter of law. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

PROOF

Testimony asserting sodomy must be subjected to most careful scrutiny, and such principle is applicable to invitation to sodomy. *Kelly v. United States* (1952, 90 U. S. App. D. C. 125, 194 F. 2d 150).

PROSECUTION BY U. S. ATTORNEY

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purposes, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States of America v. Paul Strothers* (1955, 97 U. S. App. D. C. 63, 228 F. 2d 34).

QUESTIONS OF FACT

In prosecution for soliciting a person for immoral or lewd purposes, whether a solicitation occurred and whether solicitation was by defendant or by arresting officer, were for jury where testimony was conflicting and conflicting inferences could reasonably be drawn therefrom. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

REOPENING OF PROSECUTION

Reopening of prosecution for soliciting for prostitution, after both government and defense had rested and final argument had commenced, to receive corroborating testimony as to defendant's presence at time and place of alleged offense was within sound discretion of trial court. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

REVIEW

Where prior to taking of testimony on information motion to dismiss on ground that information did not charge crime was denied, and evidence was taken and motion on ground that no crime was charged and that crime had not been established was granted because evidence was insufficient, and judgment of not guilty was then entered on record, judgment was that evidence failed to sustain offense charged and state had no right to appeal. *Korol v. United States* (D. C. Mun. App. 1951, 82 A. 2d 129).

RIGHTS OF ACCUSED

In prosecution for addressing a person for immoral purposes, brought to court without jury, record did not establish that court failed to afford accused protection accused would have been afforded by properly instructed jury. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

TESTIMONY OF ARRESTING OFFICER

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 99 U. S. App. D. C. 97, 237 F. 2d 578).

§ 22-2707 [6:181]. Procurer—Punishment for receiving money or valuable thing for arranging assignation or debauchery—Penalty.

NOTES TO DECISIONS

ATTEMPT

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Id.*

EVIDENCE

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

PRINCIPAL ELEMENTS

Principal elements of crime described in statute making it unlawful for any one to receive money or other valuable thing for arranging for or causing any female to have sexual intercourse with any other person or engage in prostitution, debauchery, or any other immoral act are the receipt of money and the arranging of an

assignment. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Statute making it unlawful for any one to receive money or other valuable things for arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act includes not only the actual act of procurement but also the agreement to procure. *Id.*

§ 22-2722 [6: 193]. Keeping bawdy or disorderly houses.

NOTES TO DECISIONS

ARREST

In prosecution for keeping a disorderly house, affidavit made by arresting officer in applying for warrant was sufficient to establish probable cause. *Packard et al. v. United States* (D. C. Mun. App. 1950, 77 A. 2d 19).

Chapter 28.—RAPE

§ 22-2801 [6:32]. Definition and penalty.

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, § 24-203.

NOTES TO DECISIONS

ASSIGNMENT OF ERROR

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 89 U. S. App. D. C. 197, 191 F. 2d 477).

CONFESSION

Where issue of voluntariness of confessions was for jury, defendant was not prejudiced because trial judge did not in the first instance hear the testimony as to the admissibility of the confession, out of the presence of the jury. *De Lorenzo v. United States of America* (1955, 95 U. S. App. D. C. 74, 219 F. 2d 506).

In rape prosecution, issue of voluntariness of confessions was for jury to determine. *Id.*

CONSTRUCTION

The elements of the crime of carnally knowing and abusing a female child under statute of the District of Columbia are penetration of a child under the age of 16. *Wheeler v. United States* (1953, 93 U. S. App. D. C. 159, 211 F. 2d 19).

DEATH PENALTY

In prosecution for rape of nine-year-old girl, death sentence was within sound discretion of jury alone, and in considering imposition of death sentence, jury could give weight to any consideration such as age, sex, ignorance, illness or intoxication. *Tatum v. United States* (1951, 88 U. S. App. D. C. 386, 190 F. 2d 612).

DUE PROCESS

In rape prosecution, where record left serious doubt as to whether defendant had enjoyed due process of law regarding his right to effective assistance of counsel and right to testify in his own behalf, defendant was entitled to have sentence vacated. *Mason v. United States* (1951, 90 U. S. App. D. C. 1, 193 F. 2d 23).

ERROR AFFECTING SUBSTANTIAL RIGHTS

Statement of counsel for defendant in closing argument to jury in prosecution for rape of nine-year-old, that verdict of guilty was proper under the circumstances and evidence, was a defect affecting "substantial rights" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Tatum v. United States* (1951, 88 U. S. App. D. C. 386, 190 F. 2d 612).

Where counsel for defendant in prosecution for rape of nine-year-old girl stated in closing argument to jury that a verdict of guilty was proper, reference by trial court in charge to the concession of guilt, and failure to caution jury that notwithstanding such concession, defendant was entitled to have the jury alone determine his guilt or innocence, constituted a defect affecting "substantial right" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Id.*

EVIDENCE

In prosecution for rape, admission into evidence of manifest kept by taxi driver was not error, where such exhibit met requirements of Federal Business Records Act of being made in usual course of business and within reasonable time after event in issue, in absence of showing of prejudice to defendant. *Edward Hines v. United States of America* (1955, 95 U. S. App. D. C. 118, 220 F. 2d 381).

In prosecution for rape, action of trial court in admitting into evidence certain articles of wearing apparel worn by victim, which were not turned over to police until morning after crime, was not error, where reasons for articles not being turned over until next morning were adequately explained. *Id.*

Where female child, whom defendant was charged with having carnally known and abused, went to her grandmother's home three blocks away within an hour, at most, after alleged attack, and when child arrived she was highly distraught, in shock, and crying, and when grandmother asked child what was wrong with her, child replied that defendant just had something to do with her, court probably admitted grandmother's testimony concerning child's statement to grandmother, under the spontaneous exclamation exception to the hearsay rule. *Wheeler v. United States* (1954, 93 U. S. App. D. C. 159, 211 F. 2d 19).

In prosecution for carnally knowing and abusing a female child under the age of 16 years, child's statement, which had been given to the police, and which was used to impeach the child's testimony exonerating defendant, did not constitute direct evidence of the crime charged. *Id.*

In prosecution for rape, circumstantial evidence was sufficient to corroborate complaining witness' testimony. *McGuinn v. United States* (1951, 89 U. S. App. D. C. 197, 191 F. 2d 477).

Only circumstantial evidence is required to corroborate complaining witness' testimony in rape case. *Id.*

EVIDENCE, ADMISSIBILITY

In prosecution for carnally knowing a female child, allowing child to testify, over objection that defendant had abused her similarly on previous occasions was proper in view of fact that there was independent evidence which pointed to defendant as having committed the offense charged. *Crawford v. United States* (1952, 91 U. S. App. D. C. 234, 198 F. 2d 976).

In prosecution for carnally knowing a female child, where defendant initiated inquiry into child's statement and made full use thereof to cast doubt upon his identity as the assailant, the interest of justice would not require reversal because of admission, without objection, of other statement by child on same subject which defendant, upon appeal, maintained should have been excluded by trial court as hearsay. *Id.*

INDICTMENT

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is

found not guilty under the first count. *Julius C. Thompson v. United States* (1955, 97 U. S. App. D. C. 116, 228 F. 2d 463).

INSTRUCTIONS

In rape prosecution, wherein jury had been instructed on verdicts of guilty with death penalty, guilty as charged, not guilty by reason of insanity, or not guilty, and jury after deliberating several hours asked court whether jury could be assured that defendant legally would be imprisoned for remainder of his life, court's response that the maximum term that court could impose was 30 years but that court also was required to impose a minimum sentence so that longest term court could impose would be indeterminate sentence of 10 to 30 years and that at end of minimum sentence parole board would have to decide whether maximum should be served or anything less than the maximum, did not constitute error. *Mallory v. United States* (1956, 98 U. S. App. D.C. 406, 236 F. 2d 701; reversed and remanded 354 U. S. 449).

In prosecution for rape, action of trial court in submitting question of death penalty to jury where government had not asked for such penalty, was not error, where court advised jury that government did not ask that penalty and that they could take that fact into consideration, and where death penalty actually was not returned and defendant was not thereby prejudiced. *Edward Hines v. United States of America* (1955, 95 U. S. App. D. C. 118, 220 F. 2d 381).

In prosecution for rape and sodomy, defendant's prayer for instruction requiring utmost resistance by complaining witness incorrect. *McGuinn v. United States* (1951, 89 U. S. App. D. C. 197, 191 F. 2d 477).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be mortal to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*

In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *Id.*

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Julius C. Thompson v. United States* (1955, 97 U. S. App. D. C. 116, 228 F. 2d 463).

INTENT

Specific intent to commit rape is not required to warrant conviction thereof. *McGuinn v. United States* (1951, 89 U. S. App. D. C. 197, 191 F. 2d 477).

MENTAL CAPACITY

In prosecution for rape of nine-year-old girl, evidence as to alleged insanity of defendant, was sufficient to raise issue to jury under guidance of instructions. *Tatum v. United States* (1951, 88 U. S. App. D. C. 386, 190 F. 2d 612).

MOTION ATTACKING SENTENCE

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court,

in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 89 U. S. App. D. C. 332, 191 F. 2d 504).

PROCEDURE

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 89 U. S. App. D. C. 332, 191 F. 2d 504).

REVERSIBLE ERROR

Where evidence in prosecution for rape of nine-year-old girl raised defense of insanity, but no instructions thereon were given, and counsel for defendant stated in closing argument to jury that verdict of guilty was proper and trial court in its charge referred to such concession of guilt and omitted to instruct jury that notwithstanding concession, defendant was entitled to have jury alone determine his guilt or innocence, there was reversible error. *Tatum v. United States* (1951, 88 U. S. App. D. C. 386, 190 F. 2d 612).

STATEMENTS PRIOR TO ILLEGAL DETENTION

Incriminating statements made prior to illegal detention of a defendant without taking him to committing magistrate were not inadmissible because of such detention. *Aaron Perry v. United States* (1957, 102 U. S. App. D. C. 313, 253 F. 2d 337).

SUFFICIENCY OF EVIDENCE

In prosecution for rape, evidence was sufficient to sustain conviction. *Edward Hines v. United States of America* (1955, 95 U. S. App. D. C. 118, 220 F. 2d 381).

Chapter 29.—ROBBERY

§ 22-2901 [6: 34]. Robbery.

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, § 24-203.

NOTES TO DECISIONS

BURDEN OF PROOF

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

CONDUCT OF PROSECUTING ATTORNEY

In robbery prosecution, language of prosecuting attorney to jury was not so extreme as to vitiate judgment and permit collateral attack. *James E. Adams v. United States of America* (1955, 95 U. S. App. D. C. 354, 222 F. 2d 45).

DETERMINATION ON APPEAL

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth

of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

DISCRETION OF COURT

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1951, 90 U. S. App. D. C. 12, 193 F. 2d 694).

ELEMENTS OF THE OFFENSE

"Robbery", as used in Penal Statute of District of Columbia Code, means robbery in the usual common-law sense as expanded to include sudden or stealthy seizure or snatching. *United States v. Mann et al.* (1954, 119 F. Supp. 406).

EVIDENCE

Where certain challenged evidence, in a robbery prosecution, was not shown to have consisted of statements made during illegal detention and did not result from police interrogation, it could not be deemed inadmissible. *J. W. Rogers v. United States* (1959, 105 U.S. App. D.C. 65, 263 F. 2d 902).

INDICTMENT

Variance between indictment and proof, as to ownership of property in robbery, is not material, so long as offense is otherwise described with sufficient certainty to identify the act of robbery and to establish that the property was in the immediate actual possession of the person robbed. *United States v. Mann et al.* (1954, 119 F. Supp. 406).

INSTRUCTIONS

That court failed to instruct that jury must find circumstances of identification of accused as the criminal were convincing in order to convict would not be deemed erroneous where there had been no request for such instruction, court had fully instructed jury on all questions of law including burden of proof and weighing of evidence, and there was evidence from which jury could have reasonably concluded that defendant's identification was established beyond reasonable doubt. *Obery v. United States of America* (1954, 95 U. S. App. D. C. 28, 217 F. 2d 860).

That trial court had failed to instruct that oral confession made by defendant to police should be regarded with caution did not constitute reversible error where there had been no request for such instruction and, under circumstances of case, omission did not affect defendant's substantial rights. *Id.*

ISSUE OF INSANITY

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *M. Niport v. United States* (1959, 105 U.S. App. D.C. 64, 263 F. 2d 901).

MOTION FOR NEW TRIAL

Denial of motion for new trial made after conviction for robbery and based on newly discovered evidence bearing only upon the credibility of a witness for prosecution was not abuse of discretion. *Connie Wilkins, Jr., v. United States of America* (1955, 97 U. S. App. D. C. 66, 228 F. 2d 37).

Refusal of defendant's motion for new trial after conviction of robbery on basis of newly discovered evidence discrediting any prosecuting witness was not abuse of discretion, where it appeared that alleged newly discovered evidence consisting of police record of prosecuting witness could have been procured by defendant before trial, and further that such evidence was not of such a nature that new trial would properly produce an acquittal. *Thompson v. United States* (1951, 88 U. S. App. D. C. 235, 188 F. 2d 652).

MOTION TO VACATE SENTENCE

District Court's denial of defendant's motion to vacate sentence of two to seven years imposed on defendant's plea of guilty to charges of robbery, on ground that plea was coerced, would not be disturbed by Court of Appeals, where testimony could be viewed to support thesis that court-appointed counsel of defendant merely brought his professional judgment and experience to bear, as he was bound to do, in advising defendant of high probability of conviction and of sentences some courts had imposed on pleas of guilty in such cases, and it was not shown that counsel's estimate of case was either erroneous or made to mislead defendant, and it did not appear that counsel's estimate of sentence was offered defendant as a promise rather than a hope. *J. E. Smith v. United States* (1959, 105 U.S. App. D.C. 155, 265 F. 2d 99).

ORAL ADMISSIONS

Where there was no suggestion of coercion, with respect to defendant's oral admissions to the police or any factor making it appropriate for the appellate court to reach the question of admissibility despite the absence of objection, the matter was not reviewable. *J. S. Gilliam v. United States* (1958, 103 U.S. App. D.C. 181, 257 F. 2d 185).

OWNERSHIP OF PROPERTY

Ownership of property, alleged to have been subject of robbery, need be alleged in indictment only to show that property was in some one else other than accused and to describe the property taken. *United States v. Mann et al.* (1954, 119 F. Supp. 406).

PREJUDICIAL ERROR

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1951, 90 U. S. App. D. C. 12, 193 F. 2d 694).

QUESTION FOR JURY

In robbery prosecution, issue of identity of defendant was one of fact which trial court properly submitted to jury. *Thompson v. United States* (1951, 88 U. S. App. D. C. 235, 188 F. 2d 652).

RECORD ON APPEAL

Record upon appeal from conviction in Federal District Court for armed robbery showed no prejudicial error. *James Warren Thompson v. United States of America* (1955, 96 U. S. App. D. C. 162, 223 F. 2d 627).

SETTING ASIDE OF VERDICT

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

SUFFICIENCY OF EVIDENCE

Evidence supported conviction of robbery. *Thompson v. United States* (88 U. S. App. D. C. 235, 188 F. 2d 652).

One could be convicted of robbery on uncorroborated testimony of complainant. *Thompson v. United States* (88 U. S. App. D. C. 235, 188 F. 2d 652).

SUPPRESSION OF EVIDENCE

In prosecution for robbery, defendant was not entitled to suppression of gun which was taken from defendant's automobile after his arrest by police upon a warrant. *Bennett v. United States* (1957, 101 U. S. App. D. C. 413, 249 F. 2d 505).

VACATUR OF SENTENCE ON APPEAL

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in

second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with the other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *A. L. Campbell v. United States* (1958, 103 U.S. App. D.C. 308, 258 F. 2d 160).

§ 22-2902 [6: 35]. Attempt to commit robbery.

NOTES TO DECISIONS

CORROBORATION

Evidence sustained conviction of attempt to commit robbery in violation of District of Columbia Code, notwithstanding fact that testimony of principal prosecution witness was uncorroborated and that intent to rob could only be inferred. *Accardo v. United States* (1957, 102 U. S. App. D. C. 4, 249 F. 2d 519).

VACATUR OF SENTENCE ON APPEAL

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *A. L. Campbell v. United States* (1958, 103 U.S. App. D.C. 308, 258 F. 2d 160).

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3102 [6: 57]. Unlawful entry on private property.

Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building or other property, or part of such dwelling, building or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$100 or imprisonment in the jail for not more than six months, or both, in the discretion of the court. (As amended July 17, 1952, 66 Stat. 766, ch. 941, § 1.)

AMENDMENTS

1952—The act of July 17, 1952, extended the coverage to public buildings and other property and increased the limitation on the fine from \$50 to \$100. The section was further extended to apply to violators "thereon" as well as "therein" the property described. Other changes in language were made.

NOTES TO DECISIONS

ENTRY TO SECURE DIVORCE EVIDENCE

In prosecution for unlawful entry by a private detective and photographer, employed by husband to secure evidence against his wife in a divorce proceeding, alleged right of husband to make what would otherwise be an illegal entry in order to prevent the debauchment of his wife would be personal to the husband and could not be invoked by the defendants. *Leon and McManaway v. United States* (D. C. Mun. App. 1957, 136 A. 2d 588).

ESSENTIAL ELEMENT OF OFFENSE

In a prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, one of essential elements is whether entry was against will of one who was lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

LAWFUL OCCUPANCY ISSUE OF FACT

In prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, wherein complaining witness presented evidence tending to show that she was tenant in possession of apartment and defense introduced testimony of rental agent that apartment was rented to a couple, whether complainant was a lawful occupant was a question for the jury. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

UNLAWFUL PURPOSE OF OCCUPANCY

In prosecution for unlawfully entering a private dwelling against will and without consent or authority of lawful occupant, issues as to whether complaining party occupied apartment under an alias or occupied it for purpose of having adulterous relations with another had no bearing on question of whether she was a lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

§ 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

NOTES TO DECISIONS

EVIDENCE

In prosecution for destroying private property, where complainant purchased premises at foreclosure and sent a letter to defendant alleging ownership, and successfully prosecuted a suit for eviction, while deed was admissible evidence of ownership, it was not the only admissible evidence and complainant's testimony relating thereto, was equally admissible. *Theodore R. Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

Evidence supported conviction of destroying private property. *Id.*

SUFFICIENCY OF EVIDENCE FOR JURY

In prosecution for destroying private property, evidence upon the question as to whether complainant was holder of legal title or had right of possession when the offense was committed was sufficient for the jury. *Theodore R. Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

Chapter 32.—WEAPONS

Sec.

22-3217. Dangerous articles—Definitions—Taking and destruction—Procedure (New).

§ 22-3201 [6: 116a]. Possession, sale, transfer, and use of dangerous weapons—Definition.

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, § 24-203.

§ 22-3202 [6: 116b]. Committing crime when armed—Added punishment.

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, § 24-203.

NOTES TO DECISIONS

ADDITIONAL PENALTY

One convicted of attempted robbery could not be given additional punishment under statute authorizing such where crime of violence is committed with pistol or firearms where indictment did not charge such aggravating facts, even though he did not dispute testimony and defended on issues of identity and insanity. *George T. Jordan v. United States District Court for the District of*

Columbia (1956, 98 U. S. App. D. C. 160, 233 F. 2d 362).

Charge in indictment that offense was committed "with force and arms" was insufficient to charge that defendant had been "armed with pistol or other firearm", to bring him within purview of statute imposing additional penalty for aggravated offense. *Id.*

INDICTMENT

Under statute imposing additional penalty upon one who commits crime of violence when armed with firearm, facts in aggravation must be charged in indictment and found to be true by jury before additional penalty may be imposed. *George T. Jordan v. United States District Court for the District of Columbia* (1956, 98 U. S. App. D. C. 160, 233 F. 2d 362).

§ 22-3203 [6:116c]. Unlawful possession of a pistol.

No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District of Columbia, if—

(1) he is a drug addict;

(2) he has been convicted in the District of Columbia or elsewhere of a felony;

(3) he has been convicted of violating section 22-2701, section 22-2722, or sections 22-3302 to 22-3306; or

(4) he is not licensed under section 22-3210 to sell weapons, and he has been convicted of violating sections 22-3201 to 22-3216.

No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by expanding the application of the section which previously provided that no one who had been convicted of a crime of violence should own or possess a pistol in the District of Columbia.

CHANGE OF SECTION HEADING

Section was formerly entitled "Persons convicted of crime forbidden to possess a pistol."

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the Act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

CONSECUTIVE SENTENCES

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).

DEFENSES

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

§ 22-3204 [6:116d]. Carrying concealed weapons.

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by striking out a proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section. Similar provisions are now found in section 23-306. The section was also amended to provide for a maximum penalty of ten years for a conviction of violating the section after having previously been convicted of such offense, or of a felony.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for carrying gun without license, prosecution was required only to prove that accused carried gun and had no license to carry it, and was not required to prove all contents of original record of all licenses for carrying guns issued by superintendent of police. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

CHOICE OF SECTION

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *J. E. Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547).

CONSECUTIVE SENTENCES

Defendant simultaneously carrying two pistols, each of which was unlicensed, committed but a single offense and could not be given consecutive sentences by reason of being separately charged with carrying of unlicensed pistol in two separate informations. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

CONSTITUTIONALITY

District of Columbia Code provision denouncing offense of carrying a pistol without a license to do so is not unconstitutional in permitting imposition of greater penalty when accused has been previously convicted of that offense in District or of felony in District or anywhere. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

DISCRETION OF COURT

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license,

requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1951, 90 U. S. App. D. C. 12, 193 F. 2d 694).

DOUBLE JEOPARDY

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

The Fourteenth Amendment to the United States Constitution is not applicable in the District of Columbia. *Id.*

EVIDENCE

In prosecution for carrying gun without license, best procedure to prove that defendant had no license would be to produce official custodian of police records. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

In prosecution for carrying gun without license, testimony of lieutenant of Metropolitan Police Department that he had searched records of all persons who held licenses to carry pistols in District of Columbia and that there was no record that defendant had a license was primary evidence of state of facts and not hearsay. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

EVIDENCE, SUFFICIENCY OF

In absence of objection to testimony of police lieutenant who stated that he had searched pistol license records, and in absence of attempt to cross-examine him as to extent of his knowledge and familiarity with records or contention that he was not in a position to make a complete search and render accurate report, testimony was of sufficient probative force to show that accused had no license even though official custodian was not produced. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

INDICTMENT

Failure of pistol-carrying count of indictment to allege or proof to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior convictions. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

Pistol-carrying count of indictment was not defective in using conjunctive "and," instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

INSTRUCTIONS

In prosecution for violation of statute defining the offense a person commits in carrying a pistol without license except in his dwelling house or place of business or on other land possessed by him, jury question was presented as to whether place at which defendant was carrying weapons was his place of business. *Alexander v. United States* (1953, 93 U. S. App. D. C. 240, 210 F. 2d 727).

ISSUE OF INSANITY

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *M. Niport v. United States* (1959, 105 U.S. App. D.C. 64, 263 F. 2d 901).

PREJUDICIAL ERROR

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1951, 90 U. S. App. D. C. 12, 193 F. 2d 694).

PRIOR CONVICTION

A state legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

Where defendant had been convicted of carrying a dangerous weapon and for housebreaking and larceny, and sentence for first offense was not to take effect under judgment until expiration of sentences on other offenses, but judgment of conviction on other offenses was reversed on appeal, appropriate procedure would be to vacate judgment of conviction on first offense and remand case for entry of judgment thereon with direction for new trial as to other offenses. *Leroy Payton v. United States* (1955, 96 U. S. App. D. C. 1, 222 F. 2d 794).

PROBABLE CAUSE FOR ARREST AND SEARCH

Probable cause to justify arrest without warrant means more than a bare suspicion, and it exists where the facts and circumstances within officers' knowledge are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

Where officers were told during nighttime, by a young girl, that a man fitting general description had chased girl out of house with a gun, officers had probable cause to arrest defendant without warrant. *Id.*

Where officers had probable cause to arrest defendant without warrant, ensuing search was legal and unregistered guns discovered thereby were admissible in evidence. *Id.*

Where officer observed person on street at 5:19 a. m., and, when asked what he was doing on street at such hour, person answered evasively, and when turning to leave, officer's elbow bumped solid unseen object on person's stomach, officer had probable cause for arrest and search which revealed concealed loaded pistol. *James David Dickerson v. United States* (D. C. Mun. App. 1956, 120 A. 2d 588).

In determining whether police officer had probable cause for arrest and search of person, which revealed concealed pistol, question was not whether person was proved guilty beyond reasonable doubt, but whether as practical matter, man of ordinary and reasonable caution would have reason to believe that person was carrying a gun. *Id.*

PROOF OF PRIOR CONVICTION

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Joseph R. Jackson v. United States* (1955, 95 U. S. App. D. C. 328, 221 F. 2d 883).

QUESTIONS OF FACT

In prosecution for violation of statute forbidding carrying of pistol on or about one's person without a license, question whether, in having loaded pistol under hinged

front seat of automobile so that he could get it by alighting from automobile and tilting driver's seat upward and forward, defendant had the weapon in such proximity to his person as to be convenient of access and within reach was one for jury. *Wilson v. United States* (1952, 91 U. S. App. D. C. 135, 198 F. 2d 299).

In prosecution for carrying gun without license, whether defendant had license was a question for the jury. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

SECTIONS 22-3204 AND 22-3214 DISTINGUISHED

Section 22-3214 (b) specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

SELF-DEFENSE

Where defendant, who was seated on right front fender of his automobile was attacked by disorderly group of men and women, retreated to driver's side of automobile, obtained pistol on floor of automobile under driver's seat and fired on his pursuers while backing away, defendant was justified in using weapon in self-defense, and fact that he had it in his hands did not constitute violation of statute forbidding carrying of pistol on or about one's person without a license. *Wilson v. United States* (1952, 91 U. S. App. D. C. 135, 198 F. 2d 299).

§ 22-3205 [6:116e]. Exceptions to section 22-3204.

NOTES TO DECISIONS

BUSINESS OF REPAIRING FIREARMS

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

§ 22-3207 [6:116g]. Selling pistol to minors and others.

No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is forbidden by section 22-3203 to possess a pistol, or, except when the relation of parent and child or guardian and ward exists, is under the age of twenty-one years. (July 8, 1932, 47 Stat. 652, ch. 465, § 7; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by inserting the revised language forbidding the sale of a pistol to a person by section 22-3203 to possess a pistol, and by increasing the age requirement to twenty-one years.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

§ 22-3208 [6:116h]. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the

case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he is not forbidden by section 22-3203 to possess a pistol. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers. (July 8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by striking from the second sentence the words "a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence" and inserting therefor "a statement that he is not forbidden by section 3 of this Act to possess a pistol". Section 3 of the Act is found in the Code as section 22-3203.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

§ 22-3210 [6:116j]. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

The commissioners of the District of Columbia may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 22-3209, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

4. A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the commissioners, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the commissioners of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that he is not forbidden by section 22-3203 to possess a pistol. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years.

6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section. (July 8, 1932, 47 Stat. 652, ch. 465, § 10; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by changing the first sentences of paragraphs three and five to conform to section 22-3203 concerning persons who cannot possess pistols. The age requirement in numbered paragraph three has been increased from eighteen to twenty-one years.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the Act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

§ 22-3214 [6:116n]. Possession of certain dangerous weapons prohibited—Exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, sand club, sandbag, switch-blade knife, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: *Provided, however,* That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Depart-

ment or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under section 22-3210.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than three inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding switch-blade knives to the list of weapons forbidden to be possessed. Subsection (b) concerning possession of weapons with the intent to use unlawfully against another, and subsection (c) increasing the maximum penalty from one year to ten years imprisonment for persons convicted of the section after previously having been convicted of a violation of the section or of a felony.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

CHOICE OF SECTION

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *J. E. Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547)

SECTIONS 22-3204 AND 22-3214 DISTINGUISHED

The 1953 act specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

§ 22-3215 [6:116o]. Penalties.

NOTES TO DECISIONS

CONSTITUTIONALITY

District of Columbia Code provision denouncing offense of carrying a pistol without a license to do so is not unconstitutional in permitting imposition of greater penalty when accused has been previously convicted of

that offense in District or of felony in District or anywhere. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

DOUBLE JEOPARDY

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

The Fourteenth Amendment to the United States Constitution is not applicable in the District of Columbia. *Id.*

INDICTMENT

Failure of pistol-carrying count of indictment to allege or proof to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior conviction. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

Pistol-carrying count of indictment was not defective in using conjunctive "and", instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

PRIOR CONVICTION

A State legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

PROOF OF PRIOR CONVICTION

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Joseph R. Jackson v. United States* (1955, 95 U. S. App. D. C. 328, 221 F. 2d 883).

§ 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

(a) As used in this section, the term "dangerous article" means (1) any weapon such as a pistol, machine gun, sawed-off shotgun, blackjack, slingshot, sandbag, or metal knuckles, or (2) any instrument, attachment, or appliance for causing the firing of any firearms to be silent or intended to lessen or muffle the noise of the firing of any firearms.

(b) A dangerous article unlawfully owned, possessed, or carried is hereby declared to be a nuisance.

(c) When a police officer, in the course of a lawful arrest or lawful search, discovers a dangerous article which he reasonably believes is a nuisance under subsection (b) he shall take it into his possession and surrender it to the property clerk of the Metropolitan Police Department.

(d) (1) Within thirty days after the date of such surrender, any person may file in the office of the property clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the property clerk shall notify each such claimant, by registered mail addressed to the address shown on the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within sixty days after the date of such surrender.

(2) At the hearing the property clerk shall hear and receive evidence with respect to the claims filed under paragraph (1). Thereafter he shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his decision to writing. The property clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within thirty days after the day on which the copy of such decision was mailed to such claimant, file an appeal in the municipal court for the District of Columbia. If the claimant files an appeal, he shall at the same time give written notice thereof to the property clerk. If the decision of the property clerk is so appealed, the property clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he shall dispose of such dangerous article in accordance with the judgment of such court. The municipal court for the District of Columbia is authorized to determine which claimant, if any, is entitled to possession of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f).

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the property clerk shall dispose of such dangerous article in accordance with subsection (f).

(5) The property clerk shall make no disposition of a dangerous article under this section, whether in accordance with his own decision or in accordance with the judgment of the municipal court for the District of Columbia, until the United States attorney for the District of Columbia certifies to him that such dangerous article will not be needed as evidence.

(e) A person claiming a dangerous article shall be entitled to its possession only if (1) he shows on satisfactory evidence that he is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; and (2) he shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his knowledge or consent; and (3) the receipt of possession by him will not cause the article to be a nuisance. A representative is accredited if he has a power of attorney from the owner.

(f) If a person claiming a dangerous article is entitled to its possession as determined under subsections (d) and (e), possession of such dangerous article shall be given to such person. If no person so claiming is entitled to its possession as determined under subsections (d) and (e), or if there be no claimant, such dangerous article shall be destroyed. In lieu of such destruction, any such serviceable dangerous article may, upon order of the Commissioners of the District of Columbia, be transferred to and used by any Federal or District Government law-enforcing agency, and the agency receiving same shall establish property responsibility and records of these dangerous articles.

(g) The property clerk shall not be liable in damages for any action performed in good faith under this section. (July 8, 1932, 47 Stat. 650, ch. 465, § 18, as added Feb. 30, 1952, 66 Stat. 8, ch. 47, § 1.)

NOTES TO DECISIONS

SEARCH

Where police officers searched accused's premises under valid search warrant and arrested persons in accused's absence, pistols which were found and which accused had allegedly received as stolen property and which might have affected escape of those lawfully arrested were validly seized, and hence subsequent arrest of accused for receiving stolen property was not invalid as fruit of unlawful search, and narcotics taken from accused's person were admissible in subsequent narcotics prosecution. *Palmer v. United States* (1953, 92 U. S. App. D. C. 103, 203 F. 2d 66).

Chapter 33.—VAGRANCY

§ 22-3302. "Vagrants" defined.

The following classes of persons shall be deemed vagrants in the District of Columbia:

(1) Any person known to be a pickpocket, thief, burglar, confidence operator, or felon, either by his own confession or by his having been convicted in the District of Columbia or elsewhere of any one of such offenses or of any felony, and having no lawful employment and having no lawful means of support realized from a lawful occupation or source, and not giving a good account of himself when found loitering around in any park, highway, public building, or other public place, store, shop, or reservation, or at any public gathering or assembly.

(2) Repealed.

(3) Any person leading an immoral or profligate life who has no lawful employment and who has no lawful means of support realized from a lawful occupation or source.

(4) Any person who keeps, operates, frequents, lives in, or is employed in any house or other establishment of ill fame, or who (whether married or single) engages in or commits acts of fornication or perversion for hire.

(5) Any person who frequents or loafs, loiters, or idles in or around or is the occupant of or is employed in any gambling establishment or establishment where intoxicating liquor is sold without a license.

(6) Any person wandering abroad and lodging in any grocery or provision establishment, vacant house, or other vacant building, outhouse, market

place, shed, barn, garage, gasoline station, parking lot, or in the open air, and not giving a good account of himself.

(7) Any person wandering abroad and begging, or who goes about from door to door or places himself in or on any highway, passage, or other public place to beg or receive alms.

(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself.

(9) And all persons who by the common law are vagrants, whether embraced in any of the foregoing classifications or not. (Dec. 17, 1941, 55 Stat. 808, ch. 589, § 1; June 29, 1953, 67 Stat. 97, ch. 159, § 209.)

REPEAL

1953—Act of June 29, 1953, repealed subsection (2) relating to possession of implements of crime. Similar provisions with an increased penalty are contained in that act as a separate offense as set forth in section 22-3601.

NOTES TO DECISIONS

ARREST

A small crowbar, three pairs of pliers and two screwdrivers, found in automobile at time of its owner's arrest, were not such tools as are usually employed or reasonably may be employed in commission of crime within statute defining as a vagrant one found in possession of such tools without satisfactorily accounting therefor, so that his possession thereof was not a misdemeanor committed in arresting officer's presence, as required to justify arrest without warrant. *Green v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 712).

AUTHORITY OF POLICE OFFICER

Officers of the law have no right to compel one to account for his actions merely because that person is on street at an unusual hour. *Beail v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Where female defendant was seen wandering around streets time after time in early morning hours, often alone but sometimes in company of a known prostitute, and engaging in conversations with men, with no indication that such course of conduct had any legitimate purpose, arresting officer had reasonable grounds for believing that her use of streets was not for any legitimate purpose and could ask that she account for her actions. *Id.*

CONSTRUCTION

The vagrancy statute must be construed narrowly in favor of defendant. *E. R. Harris v. District of Columbia* (1958, 102 U. S. App. D. C. 202, 251 F. 2d 913).

Under statute defining vagrant as person who wanders about streets at late and unusual hours of night "without any visible and lawful business" and not giving a good account of himself, quoted phrase does not refer to ordinary vocation of person, but has reference to purpose of being on street, and "business" as specified therein is not to be limited to pursuit of monetary gain. *Beail v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Vagrant statute is not to be construed as a curfew law, forbidding persons to be on streets after certain hour of night. *Id.*

Vagrancy statutes are designed to prevent crime and if officer must wait until crime is committed, preventive purposes of statute wholly fails. *Id.*

Where defendant was charged and convicted of being a vagrant under statute defining vagrant as person who wanders about streets at late and unusual hours at night without any visible and lawful business and not giving a good account of herself, defendant could be guilty of vagrancy under such statute, notwithstanding fact that she might be a person of fixed abode having lawful means of support. *Id.*

DEGREE OF PROOF

In vagrancy prosecution against defendant charged with frequenting houses of ill fame, government was not required to prove that occupants of house previously arrested were duly convicted in court. *Fields v. District of Columbia* (D. C. Mun. App. 1950, 77 A. 2d 563).

EVIDENCE

In prosecution for vagrancy under information which charged that defendant was by confession or conviction known to be a pickpocket, thief, burglar, confidence operator or felon, evidence that defendant was a known thief because she had once been convicted of taking and carrying away property of another without right was not sufficient to establish that she was known to be a thief within meaning of vagrancy statute. *E. R. Harris v. District of Columbia* (1958, 102 U. S. App. D. C. 202, 251 F. 2d 913).

On defendant's motion, at conclusion of government's case, for judgment of acquittal, government's evidence was construed in light most favorable to government and was accepted as true, together with all reasonable inferences to be drawn therefrom. *Paul Mitchell v. District of Columbia* (D. C. Mun. App. 1955, 113 A. 2d 566).

Evidence was sufficient to sustain conviction for being a vagrant. *Id.*

Evidence sustained defendant's conviction of vagrancy. *Beail v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

In prosecution for vagrancy, where defendant was not confronted with an order or demand to explain her presence in the street, her conviction was reversed. *Beail v. District of Columbia* (1952, 91 U. S. App. D. C. 110, 201 F. 2d 176).

EVIDENCE, ADMISSIBILITY

On stating that he kept small crowbar, found on front seat of his automobile, to get starter out of jam and used pliers and screwdrivers, found on floor of automobile, to work on it, in answer to questions asked by police officer before arresting him without warrant on charge of vagrancy in possessing tools usually employed or reasonably employable in commission of crime without satisfactorily accounting therefor, gave legitimate reasons for possession of such tools, in view of evidence that he was a mechanic, so that tools were improperly received in evidence against him in prosecution for such offense. *Green v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 712).

LAWFUL MEANS OF SUPPORT

Woman living together with man "common law" has no "lawful" means of support, realized from a "lawful" occupation or source, for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

NATURE OF VAGRANCY

Under statute providing that anyone who wanders about streets at late or unusual hours of the night without visible and lawful business and "not giving a good account of himself" is deemed a vagrant, quoted words mean not giving a good account upon order or demand to explain presence in the street, rather than just in response to casual or bantering questions. *Beail v. District of Columbia* (1952, 91 U. S. App. D. C. 110, 201 F. 2d 176).

PROOF OF INTENT

Under statute providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of the implement, proof of intent is essential element of government's case. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

PURPOSE OF STATUTE

It was not purpose of vagrancy statute to deprive persons of use of public sidewalks, so long as they are used either for legitimate purpose of pleasure or business; but

when course of conduct indicates reasonable belief that use of street is not for legitimate purposes, officer may ask one to account for his actions. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

"THIEF" DEFINED

The word "thief" as used in vagrancy statute does not cover a person who has been guilty only of unauthorized borrowing. *E. R. Harris v. District of Columbia* (1958, 102 U. S. App. D. C. 202, 251 F. 2d 913).

"Thief" is used generically in vagrancy statute and may be defined as one who takes property of another without knowledge or consent of latter; and a conviction under statute making it a misdemeanor to take and carry away property of another without right to do so rendered convict a "known thief" for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

§ 22-3303. Prosecutions—Burden of proof to show lawful employment.

NOTES TO DECISIONS

BURDEN OF PROOF

Vagrancy statute places burden of proof upon a defendant charged with its violation to show that he had lawful employment or lawful means of support. *Barnard v. District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 514).

Chapter 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts—Children.

NOTICE TO DECISIONS

CONDUCT OF TRIAL COUNSEL

Reversal of conviction under the Miller Act would not be justified where defendant received a fair trial and conduct of his trial counsel could hardly have affected the result in view of overwhelming evidence of defendant's guilt and trial judge gave careful instructions to jury. *W. M. Holley v. United States* (1959, 105 U.S. App. D.C. 351, 267 F. 2d 628).

CONSTITUTIONALITY

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (1950, 93 F. Supp. 647).

CORPUS DELICTI

A requisite element of evidence in prosecution for taking indecent liberties with minor child is establishment of corpus delicti. *James C. Jones v. United States* (1956, 97 U. S. App. D. C. 291, 231 F. 2d 244).

EFFECTIVE ASSISTANCE OF COUNSEL

Where trial counsel, in prosecution for taking indecent liberties with a child, did not utilize defense of insanity because counsel thought the evidence did not warrant it and because he felt that, in good conscience, he could not urge it upon the court, defendant was not denied the effective assistance of counsel because of failure to raise defense of insanity, and hence his motion to vacate judgment for such reason would be denied. *United States v. C. H. Plummer, Jr.* (1959, 171 F. Supp. 1)

ELEMENTS OF CRIME

Words "force" and "assault" are not a necessary element to commission of crime of taking of improper and indecent liberties. *G. Younger, Jr. v. United States* (1959, 105 U.S. App. D.C. 51, 263 F. 2d 735).

ENTRY WITHOUT WARRANT

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a

warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for an arrest. *J. J. Morrison v. United States* (1958, 104 U.S. App. D.C. 352, 262 F. 2d 449).

EVIDENCE

Where alleged offense of taking indecent liberties with female child occurred on a Monday night, and child had earlier opportunity to complain, testimony concerning statement child made on following Thursday morning and in answer to her mother's inquiries, was hearsay, and its admission in prosecution for the alleged offense was, under the circumstances, prejudicial error. *Smith v. United States* (1954, 94 U. S. App. D. C. 320, 215 F. 2d 682).

EVIDENCE, SUFFICIENCY OF

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to girl's statement of what defendant did to her was admissible as evidence of spontaneous declaration under exception to hearsay rule. *James C. Jones v. United States* (1956, 97 U. S. App. D. C. 291, 231 F. 2d 244).

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to child's statement of what defendant did to her was insufficient to support verdict of conviction because of failure to establish corpus delicti, in absence of evidence of injury to child. *Id.*

Evidence was insufficient to sustain conviction for taking immoral, improper and indecent liberties with minor children. *Hinton v. United States* (1952, 91 U. S. App. D. C. 13, 196 F. 2d 605).

HABEAS CORPUS

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. *Malone v. Overholser* (1950, 93 F. Supp. 647).

HEARING BEFORE COURT

Under statute providing for commitment of sexual psychopaths to hospital for the insane, alleged psychopath is entitled to a hearing before the court at which he is entitled to representation by counsel and he may be committed only upon a finding by the court or upon the verdict of a jury. *Malone v. Overholser* (1950, 93 F. Supp. 647).

ILLEGAL SEIZURE OF EVIDENTIARY MATERIAL

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offense, handkerchief was merely evidentiary material and was not instrument or means by which alleged crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was not at home. *J. J. Morrison v. United States* (1958, 104 U.S. App. D.C. 352, 262 F. 2d 449).

INDECENT LIBERTIES

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties referred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *G. Younger, Jr. v. United States* (1959, U.S. App. D.C. 51, 263 F. 2d 735).

INDICTMENT

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child

under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Julius C. Thompson v. United States* (1955, 97 U. S. App. D. C. 116, 228 F. 2d 463).

JURY INSTRUCTIONS

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *G. Younger, Jr. v. United States* (1959, 105 U.S. App. D.C. 51, 263 F. 2d 735).

MOTION FOR NEW TRIAL

Where conviction for taking indecent liberties with child under age of 16 years, rested almost entirely on testimony of 12-year-old girl, and four days after guilty verdict defendant introduced in support of motion for new trial on ground that interest of justice required granting of new trial, affidavit of girl's mother, who had not testified at trial, and who had seen and talked with girl shortly after alleged offense, contradicting testimony of girl in two respects and giving mother's opinion that nothing happened to girl, trial court erred in denying motion. *Benton v. United States* (1951, 88 U. S. App. D. C. 158, 188 F. 2d 625).

NOT CRIMINAL STATUTE

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (1950, 93 F. Supp. 647).

PREJUDICIAL ERROR

In prosecution for taking indecent liberties with a female child under 16 years of age, testimony of officer investigating the crime as to what someone told him the child said was prejudicial where there was no other testimony that the child identified the person who molested her. *Pinkard v. United States* (1957, 99 U. S. App. D. C. 394, 240 F. 2d 632).

In prosecution for taking indecent liberties with a female child under 16 years of age, hearsay statement of officer investigating the incident that witness told officer that two boys, each of whom took the stand, told her that two men had molested the girl was prejudicial notwithstanding it was contradicted by later testimony. *Id.*

§ 22-3502. Sodomy.

NOTES TO DECISIONS

ASSIGNMENT OF ERROR

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

CONFESSIONS

In prosecution of two men for sodomy, admission of one defendant's confession of prior acts of sodomy between defendants was proper under exception that evidence of other offenses than that charged is admissible in cases involving sex offenses to show defendants' mental disposition or passion. *United States v. Kelly et al.* (1954, 119 F. Supp. 217).

CONVICTION

Where evidence in prosecution for sodomy is equally susceptible of construction as showing only attempt to commit sodomy as completion of such crime, conviction of sodomy cannot stand. To sustain conviction of sodomy, there must be substantial evidence of facts consistent with accused's guilt and inconsistent with every reasonable hypothesis of innocence. *United States v. Kelly et al.* (1954, 119 F. Supp. 217).

ENTRY WITHOUT WARRANT

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for arrest. *J. J. Morrison v. United States* (1958, 104 U.S. App. D.C. 352, 262 F. 2d 449).

ILLEGAL SEIZURE OF EVIDENTIARY MATERIAL

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom the officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offence, handkerchief was merely evidentiary material and was not instrument or means by which alleged crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was at home. *J. J. Morrison v. United States* (1958, 104 U.S. App. D.C. 352, 262 F. 2d 449).

INSTRUCTIONS

In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayers for instruction requiring utmost resistance by complaining witness incorrect. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be mortal to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*

§ 22-3503. Definitions.

NOTES TO DECISIONS

CIVIL ACTION

Proceedings under statute, to determine whether defendant in pending criminal action is sexual psychopath, is a civil one. *Miller v. Overholser* (1953, 92 U. S. App. D. C. 110, 206 F. 2d 415).

CONSTITUTIONALITY

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (1950, 93 F. Supp. 647).

HABEAS CORPUS

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. *Malone v. Overholser* (1950, 93 F. Supp. 647).

NOT CRIMINAL STATUTE

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (1950, 93 F. Supp. 647).

§ 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

NOTES TO DECISIONS

CONFINEMENT

Intent of Sexual Psychopath Act is commitment for remedial treatment, and incarceration of sexual psychopath in place maintained for confinement of violent, criminal, hopeless insane, instead of in place designed and operated for mentally ill who are not insane, is not authorized by statute. *Miller v. Overholser* (1953, 92 U. S. App. D. C. 110, 206 F. 2d 415).

§ 22-3509. Parole—Discharge.

NOTES TO DECISIONS

STANDARDS FOR RELEASE

Standards provided for release of sexual psychopath from hospital are not so vague as to invalidate Sexual Psychopath Act. *Miller v. Overholser* (1953, 92 U. S. App. D. C. 110, 206 F. 2d 415).

Chapter 36.—IMPLEMENTS OF CRIME

Sec.

22-3601. Possession of implements of crime—Penalty.

§ 22-3601. Possession of implements of crime—Penalty.

No person shall have in his possession in the District any instrument, tool, or other implement for picking locks or pockets, or that is usually employed, or reasonably may be employed in the commission of any crime, if he is unable satisfactorily to account for the possession of the implement. Whoever violates this section shall be imprisoned for not more than one year and may be fined not more than \$1,000, unless the violation occurs after he has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be imprisoned for not less than one nor more than ten years. (June 29, 1953, 67 Stat. 97, ch. 159, § 209.)

CROSS REFERENCES

Arrests without a warrant and searches of the person and seizures pursuant thereto by officers upon probable cause that person possesses implements of crime in violation of the foregoing section. § 23-306.

For definition of District, see note under § 22-109.

NOTES TO DECISIONS

CONSTITUTIONALITY

The statute prohibiting possession of implements of crime is unconstitutional in its application to crowbars. *Willis C. Washington v. United States* (1956, 98 U. S. App. D. C. 100, 232 F. 2d 357).

Section of statute providing that no person shall have in his possession any instrument, tool or other equipment or other implement which reasonably may be employed in commission of any crime if he is unable satisfactorily to account for possession of the implement places burden of proof of intent upon defendant and is unconstitutional as applied to implements which do not in themselves give rise to sinister implications. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

EVIDENCE

Under statute providing that no person shall have in his possession any instrument, tool, or other implement

for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of implement, if order or demand was necessary, requirement was satisfied by evidence in prosecution thereunder. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

INFERENCE OF CRIMINAL INTENT

No rational inference of criminal intent can be drawn from mere possession of tools which reasonably may be employed in crime. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

MODIFICATION OF JUDGMENT

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Willis C. Washington v. United States* (1956, 98 U. S. App. D. C. 100, 232 F. 2d 357).

PROBABLE CAUSE FOR ARREST

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 101 U. S. App. D. C. 198, 247 F. 2d 784).

PROOF OF INTENT

Under statute providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of the implement, proof of intent is essential element of government's case. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

VALIDITY OF PRESUMPTION

Validity of presumption created by statute depends on presence of rational connection between facts proved and ultimate fact presumed and presumption cannot be sustained if inference of one from proof of the other is arbitrary because of lack of connection between the two in common experience. *Allen Benton v. United States* (1956, 98 U. S. App. D. C. 84, 232 F. 2d 341).

TITLE 23.—CRIMINAL PROCEDURE

Chap.	Sec.
8. Out-of-state witnesses.....	23-801

Chapter 1.—GENERAL PROVISIONS

Sec.	
23-115. Powers of investigators assigned to United States attorney.	

§ 23-101. Conduct of prosecutions—Party plaintiff.

NOTES TO DECISIONS

PROSECUTION BY UNITED STATES ATTORNEY

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purpose, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States of America v. Paul Strothers* (1955, 97 U. S. App. D. C. 63, 228 F. 2d 34).

§ 23-102. Conduct of prosecutions—Certification to Court of Appeals.

NOTES TO DECISIONS

PROSECUTION BY UNITED STATES ATTORNEY

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purpose, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States of America v. Paul Strothers* (1955, 97 U. S. App. D. C. 63, 228 F. 2d 34).

§ 23-105 [6: 355]. Appeals by United States and District of Columbia.

NOTES TO DECISIONS

APPEALS BY UNITED STATES

In District of Columbia criminal appeals, the government is restricted as is the defendant, though this does not mean that United States cannot appeal from final decision unless opposite decision would also have been final; and government may appeal only from an order against it which terminates a prosecution or makes a decision whose distinct or plenary character meets the standards of precedents applicable to finality problems in all federal courts. *Carroll v. United States* (1957, 354 U. S. 394, 77 S. Ct. 1332).

In view of District of Columbia code section giving government same right of appeal in criminal prosecution as is given to defendant, government's right of appeal is determined by federal judicial code provision giving Courts of Appeals jurisdiction of appeals from all "final" decisions of district courts of United States. *United States v. Cefaratti* (1952, 91 U. S. App. D. C. 297, 202 F. 2d 13).

An order that does not terminate an action but is, on the contrary, made in the course of an action, has the finality that is required for appeal under federal judicial code section governing appellate jurisdiction of Courts of Appeals, if (1) it has a final and irreparable effect on the rights of the parties, being a final disposition of a claimed right; (2) it is too important to be denied review; and (3) claimed right is not an ingredient of cause of action and does not require consideration with it. *Id.*

DOUBLE JEOPARDY

Where guilt of defendant, as a matter of law and fact, is submitted to Municipal Court of the District of Columbia, an appeal by the United States is not permitted, since defendant cannot be retried for the same offense, and therefore, even if the ruling of the trial court were found to be erroneous, the judgment could not be vacated and a new trial ordered. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

FINAL DECISION

An order entered after indictment and before trial, granting motion to suppress the only substantial evidence in support of counts charging purchase and concealment of narcotics, was an appealable "final decision". *United States v. Cefaratti* (1952, 91 U. S. App. D. C. 297, 202 F. 2d 13).

FINALITY OF DECISIONS

The underlying concepts of finality of decisions as prerequisite to appeal are the same under 28 U. S. C. A. § 1291, defining appellate jurisdiction of Courts of Appeals, as the successor to applicable provision of 1901 District of Columbia Code, as to such section as successor to the nationally applicable appeal provisions of the Judicial Code. *Carroll v. United States* (1957, 354 U. S. 394, 77 S. Ct. 1332).

In District of Columbia criminal cases, the government is not permitted to appeal where decision against it may have some characteristics of finality, yet does not either terminate the prosecution or pertaining to an independent peripheral matter such as would be appealable in other federal courts. *Id.*

JUDGMENT OF ACQUITTAL

Where it was clear from repeated statements of trial judge in prosecution for having possession of a dangerous weapon, that the trial judge was not ruling on the information as such but on the ultimate guilt of the defendant under agreed statement of facts, and trial judge made an entry granting motion of defendant to dismiss and discharging defendant, such action was equivalent to the granting of a motion for judgment of acquittal, and therefore the United States had no right of appeal to Municipal Court of Appeals of the District of Columbia. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

QUASHED INFORMATION

The United States may appeal from an order of the Municipal Court for the District of Columbia quashing an information for failure to state a crime, and discharging the defendant. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

§ 23-110 [6: 369]. Discharging joint defendant during trial in order to be witness—Bar to another prosecution.

NOTES TO DECISIONS

CONSTRUCTION

Code section, authorizing court to discharge defendant desiring to become witness for government, is not source of trial judge's authority to dismiss defendant so that he may be witness against his former codefendants, but is an immunity statute enacted for benefit and protection of defendant who is discharged for that purpose before he has been in jeopardy. *Carrado v. United States, Manfredonia v. United States, Smith v. United States, Williams v. United States, Atkins v. United States, James v. United*

States, Turner v. United States (1953, 93 U. S. App. D. C. 183, 210 F. 2d 712).

As used in statute granting immunity to defendant discharged, before he has "gone into his defense", for purpose of becoming government witness, quoted words mean "before he has been put in jeopardy", and statute's draftsman intended it to provide immunity from second prosecution for defendant who would not otherwise be entitled to it because he had not been in jeopardy. *Id.*

§ 23-115. Powers of investigators assigned to United States attorney.

Any special investigator appointed by the Attorney General and assigned to the United States attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police force of the District. (June 29, 1953, 67 Stat. 102, ch. 159 § 402.)

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

Chapter 2.—INDICTMENTS

§ 23-204 [6:364]. Indictment for perjury—Sufficiency.

NOTES TO DECISIONS

CONSTITUTIONALITY

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he stated that he, while editor of magazine, had not published articles by persons, other than Russians, whom he knew to be Communists violated the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press, and the Sixth Amendment protecting an accused in the right to be informed of nature and cause of the accusation against him. *United States v. Lattimore* (1953, 112 F. Supp. 507).

CONSTRUCTION

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment. *Young v. United States* (1954, 94 U. S. App. D. C. 54, 212 F. 2d 236).

FEDERAL RULES OF CRIMINAL PROCEDURE

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of communism or Communist interests, was fatally defective because it did not meet requirements of Federal Rule of Criminal Procedure requiring that indictment shall be plain, concise and definite written statement of essential acts constituting offense charged. *United States v. Lattimore* (1953, 112 F. Supp. 507).

MATERIALITY

Indictment charging witness with perjury allegedly committed before Senate Internal Security Subcommittee was not invalid in its entirety because it failed to

plead the particulars of materiality of testimony given by witness before committee. *United States v. Lattimore* (1953, 112 F. Supp. 507).

SUFFICIENCY

Indictment charging alleged perjury by witness before Senate Internal Security Subcommittee was not invalid because it failed to allege name of Senator administering oath to witness. *United States v. Lattimore* (1953, 112 F. Supp. 507).

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (1953, 113 F. Supp. 20).

Chapter 3.—SEARCH WARRANTS AND ARREST

Sec.

23-306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

§ 23-301 [6:357]. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

NOTES TO DECISIONS

AFFIDAVIT

Search warrant, which had been executed in accordance with Federal Rules of Criminal Procedure, was valid even though it did not comply with District of Columbia statute authorizing issuance of search warrants. *Ledbetter v. United States* (1953, 93 U. S. App. D. C. 155, 211 F. 2d 628, rehearing denied Feb. 4, 1954).

COMPLIANCE WITH FEDERAL RULES OF CRIMINAL PROCEDURE

Statute of the District of Columbia dealing with issuance of search warrants on complaint under oath need not be complied with when Federal Rule of Criminal Procedure dealing with search and seizure has been complied with. *Shay v. United States, Brown v. United States* (1954, 93 U.S. App. D.C. 379, 212 F. 2d 809, certiorari denied 347 U.S. 1012, 74 S. Ct. 865).

SUFFICIENCY OF COPY

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States, Wiggins v. United States* (1953, 93 U. S. App. D. C. 90, 209 F. 2d 298; certiorari denied 347 U. S. 905, 74 S. Ct. 430).

WAIVER OF SEARCH WARRANT REQUIREMENT

Where defendant charged with first degree murder was arrested at 6:40 p. m., and between 3 and 4 o'clock in the morning of the next day he made an oral confession and a few hours later he told police officers he was willing to take them to his room and turn over a pair of pants and a shirt that he wore during the time he committed such murder, there was valid consent to seizure of such articles of clothing by the police, and such consent waived right of defendant to have no seizure made without a search warrant. *United States v. Watson Jr.* (1956, 146 F. Supp. 258).

§ 23-306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of any section listed in subsection (b), by police officers, as in the case of a felony, upon

probable cause that the person arrested is violating the section involved at the time of the arrest.

(b) Subsection (a) shall apply with respect to section 22-3601 (possession of implements of crime), sections 22-3203, 22-3204, and 22-3214, providing for the control of dangerous weapons in the District, and section 22-1502 (possession of lottery tickets).

(c) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of section 22-2202 (petit larceny), by police officers, as in the case of a felony, upon probable cause that the person arrested has in his possession at the time of the arrest, property taken in violation of that section.

(d) No evidence discovered in the course of any arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating one of the sections referred to in subsection (b) or had in his possession property taken in violation of the section referred to in subsection (c). (June 29, 1953, 67 Stat. 96, ch. 199, § 207.)

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

CROSS REFERENCES

Dangerous weapons. §§ 22-3203, 22-3204, 22-3214.

Petit larceny. § 22-2202.

Possession of implements of crime. § 22-3601.

Possession of lottery tickets. § 22-1502.

NOTES TO DECISIONS

PROBABLE CAUSE FOR ARREST

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 101 U. S. App. D. C. 198, 247 F.2d 784).

Where first defendant had once informed arresting officer that defendant was engaged in numbers business, and first defendant was known to have police record as numbers violator and had been acting suspiciously, and officer, while going to inform second defendant of parking violation, saw second defendant pass to first defendant, in manner and at time that number slips are usually passed, an envelope, officer could, without warrant, seize envelope and arrest defendants. *McGruder H. Price et ano., v. United States* (D. C. Mun. App. 1956, 119 A. 2d 718).

PROBABLE CAUSE FOR ARREST AND SEARCH

Probable cause to justify arrest without warrant means more than a bare suspicion, and it exists where the facts and circumstances within officers' knowledge are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

Where officers were told during nighttime, by a young girl, that a man fitting general description had chased

girl out of house with a gun, officers had probable cause to arrest defendant without warrant. *Id.*

Where officers had probable cause to arrest defendant without warrant, ensuing search was legal and unregistered guns discovered thereby were admissible in evidence. *Id.*

Chapter 4.—FUGITIVES FROM JUSTICE

Sec.

23-411. Confinement in Washington Asylum and Jail of prisoners being extradited.

§ 23-401 [6: 377]. Extradition.

(a) In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Justice of the District Court of the United States for the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of sections 5278 and 5279, title 66, of the Revised Statutes of the United States, "Extradition" (U. S. C., title 18, §§ 662, 663), and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.

(b) The chief judge of the United States District Court for the District of Columbia may also surrender, on demand of the executive authority of any State, any person in the District of Columbia charged in such State in the manner provided in subsection (a) of this section with committing an act in the District of Columbia, or in another State, intentionally resulting in a crime in the State whose executive authority is making the demand, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

(c) No person apprehended in accordance with the provisions of subsections (a) and (b) of this section shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken before the chief judge of the United States District Court for the District of Columbia who shall inform him of the demand made for his surrender, and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if such person or his counsel shall state that he or they desire to test the legality of his arrest, the judge shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the United States attorney for the District of Columbia, and to the said agent of the demanding State: *Provided, however,* That nothing contained in this subsection shall prevent such person from waiving his right to appear before the chief judge of the United States District Court for the District of Columbia and voluntarily returning in custody of a proper official to the jurisdiction of the State, Territory, or other possession of the United States which

is demanding him. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 930; June 29, 1953, 67 Stat. 106, ch. 159, § 407.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by inserting the "a" preceding the first paragraph, and by adding subsections (b) and (c) which provide for extradition when a person is charged by a State with committing an act within the District of Columbia or in another State which results in the violation of the law of the State demanding extradition.

REFERENCE IN TEXT

Sections 5278 and 5279 of the Revised Statutes referred to in text have been repealed by act of June 25, 1948, chapter 645, revising the federal criminal code. Similar provision are now set out in sections 3182, 3194, and 3195 of title 18, U. S. Code.

NOTES TO DECISIONS

DUTIES OF CHIEF JUDGE

The Chief Judge of the United States District Court for the District of Columbia has executive authority similar to that of State governors in requisition proceedings. *Maktos v. Matthews* (1952, 90 U. S. App. D. C. 183, 194 F. 2d 354).

FALSE IMPRISONMENT

Where after District of Columbia judge had issued executive order, in compliance with requisition proceedings from Pennsylvania, ordering the petitioner, arrested in District, be delivered to Pennsylvania authority, petitioner instituted habeas corpus proceedings, trial court denied writ, but did not order any stay of requisition proceedings, and while appeal of habeas corpus proceeding was pending, District Marshal delivered petitioner to Pennsylvania detective, detective was protected by his warrant and executive order of judge from liability to petitioner for false imprisonment when he received him and returned him to Pennsylvania. *John G. Robinson Jr. v. Robert Harris, District Attorney et ano.* (1955, 135 F. Supp. 239).

FUGITIVE FROM JUSTICE

Under federal extradition statute, implementing the constitutional provision concerning interstate extradition, the governor of the asylum state has for decision the legal question whether the demanded person has been substantially charged with a crime, and the factual question whether he is a fugitive from justice. *Bruzaud v. Matthews* (1953, 93 U. S. App. D. C. 47, 207 F. 2d 25).

HABEAS CORPUS

Where indictment involved in extradition proceeding charged commission of crime within Virginia, District of Columbia Code provision permitting extradition from the district without showing of fugitivity of person charged with committing, outside the demanding state, an act which intentionally resulted in a crime in the demanding State was not applicable. *In Re Gibson* (1957, 147 F. Supp. 591).

Where extradition is sought for commission of crime within demanding state, it is jurisdictional that person sought to be extradited was in demanding state at time the alleged offense was committed, and, in absence of allegation as to date of offense in the indictment or papers accompanying request for requisition or of testimony as to such date at the requisition or habeas corpus proceeding, there is no prima facie case of fugitivity made by the warrant itself, and the usual presumption of fugitivity cannot arise. *Id.*

On habeas corpus review in court of asylum state of an extradition order of governor, the inquiry of the court is limited to the two questions which were before governor, namely, whether demanded person has been substantially charged with crime, and factual question whether he is a fugitive from justice. *Bruzaud v. Matthews* (1953, 93 U. S. App. D. C. 47, 207 F. 2d 25).

INDICTMENT

The federal extradition statute does not permit a requisition to be based upon a warrant of arrest, but

requires demanding governor to produce copy of an indictment or copy of an accusatory affidavit, and when an indictment had been returned and copy of it attached to requisition, no purpose was served by also attaching a copy of an earlier affidavit made by complaining witness, but affidavit was mere surplusage. *Bruzaud v. Matthews* (1953, 93 U. S. App. D. C. 47, 207 F. 2d 25).

§ 23-402. When associate justice may act.

NOTES TO DECISIONS

FALSE IMPRISONMENT

Where after District of Columbia judge had issued executive order, in compliance with requisition proceedings from Pennsylvania, ordering that petitioner, arrested in District, be delivered to Pennsylvania authority, petitioner instituted habeas corpus proceedings, trial court denied writ, but did not order any stay of requisition proceedings, and while appeal of habeas corpus proceedings was pending, District marshal delivered petitioner to Pennsylvania detective, detective was protected by his warrant and executive order of judge from liability to petitioner for false imprisonment when he received him and returned him to Pennsylvania. *John G. Robinson, Jr. v. Robert Harris, District Attorney et ano.* (1955, 135 F. Supp. 239).

§ 23-411. Confinement in Washington Asylum and Jail of prisoners being extradited.

(a) The agent of the demanding State to whom the prisoner may have been delivered in accordance with the provisions of section 23-401, may, when necessary, confine the prisoner in the Washington Asylum and Jail; and the superintendent of the Washington Asylum and Jail must receive and safely keep the prisoner for such reasonable time as will enable the officer or person having charge of him to proceed on his route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through the District of Columbia with such a prisoner for the purpose of immediately returning such prisoner to the demanding State, may, when necessary, confine the prisoner in the Washington Asylum and Jail; and the superintendent of the Washington Asylum and Jail must receive and safely keep the prisoner for such reasonable time as will enable the officer or agent to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: *Provided, however,* That such officer or agent shall produce and show to the superintendent satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding State after a requisition by the executive authority of such demanding State. Such prisoner shall not be entitled to demand a new requisition while in the District of Columbia. (June 29, 1953, 67 Stat. 107, ch. 159, § 407.)

AMENDMENTS

1953—Act of June 29, 1953, amended the act entitled "An Act to provide for the detention of fugitives apprehended in the District of Columbia," approved April 21, 1928 (D. C. Code 23-403—23-410), by adding the new section included above as section 23-411.

Chapter 6.—PROFESSIONAL BONDSMEN

§ 23-602 [6: 388]. Business impressed with public interest.

NOTES TO DECISIONS

GROUND S FOR RENEWAL OF LICENSE

Order of District Court denying application of a professional bondsman for renewal of his license to engage in bonding business on ground that applicant lacked qualifications for a bondsman was set aside. *In re Carter* (1951, 89 U.S. App. D.C. 310, 192 F. 2d 15, certiorari denied 342 U. S. 862, 72 S. Ct. 89).

§ 23-608 [6: 394]. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act.

(a) It shall be the duty of the United States District Court for the District of Columbia, the municipal court for the District of Columbia, and the juvenile court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which such business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in any such court until he shall by order of the court be authorized to do so. Such courts, in making such rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of said courts to require every person qualifying to engage in the bonding business as principal to file with said court a list showing the name, age, and residence of each person employed by said bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of said persons stating that said person will abide by the terms and provisions of this chapter. Each of said courts shall require the authority of each of said persons to be renewed from time to time at such periods as the court may by rule provide, and before said authority shall be renewed the court shall require from each of said persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of said affidavits shall be guilty of perjury.

(b) Each such court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman, or his agent, clerk, or representative, shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the

designated representative of other law-enforcement agencies of the District of Columbia, of the following matters:

- (1) The full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;
- (2) The offense with which the defendant is charged;
- (3) The name of the court or officer authorizing the defendant's admission to bail;
- (4) The amount of the bond;
- (5) The name of the person who called the bondsman, if other than the defendant;
- (6) The amount of the bondsman's charge for executing the bond;
- (7) The full name and address of the person to whom the bondsman presented his bill for such charge;
- (8) The full name and address of the person paying such charge; and
- (9) The manner of payment of such charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than \$500 or imprisoned not more than six months or both and if he is a bondsman, or the agent, clerk, or representative of a bondsman, shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order. (Mar. 3, 1933, 47 Stat. 1484, ch. 206, § 8; June 29, 1953, 67 Stat. 106, ch. 159, § 406; July 18, 1958, 72 Stat. 396, Pub. L. 85-537, § 1.)

AMENDMENTS

1958—Act of July 18, 1958, cited to text, struck out words in subsection (a) beginning with "Police court to and including District Court of the United States for the District of Columbia" and substituted the new language above set out. A part of the language directed to be stricken is "Supreme Court of the District of Columbia" as it appears in the original act of March 3, 1933, which language was obviously an error, since at that time the court was known as the District Court of the United States for the District of Columbia.

1953—Act of June 29, 1953, amended section by adding the "(a)" prior to the first paragraph, and by adding an additional subsection (b) which requires that certain detailed records be kept by bondsmen operating in the courts of the District; and that the records be open to inspection as therein provided.

NOTES TO DECISIONS

EVIDENCE

Evidence was insufficient to sustain finding that bondsman was guilty of infraction of court rule providing that any bondsman who procures or assists in procuring or attempts to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court for the District of Columbia, or solicits or receives or enters into any agreement to receive any fee, commission money, or property or things of value for procuring or assisting or attempting to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court, shall be suspended. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

GROUND S FOR RENEWAL OF LICENSE

Order of District Court denying application of a professional bondsman for renewal of his license to engage in bonding business on ground that applicant lacked qualifications for a bondsman was set aside. *In re Carter*

(1951, 89 U.S. App. D.C. 310, 192 F. 2d 15, certiorari denied 342 U.S. 862, 72 S. Ct. 89).

NATURE OF LICENSE

License to engage in bonding business, once granted, becomes a right, which ought not to be taken away on the strength of vague, indefinite, and uncorroborated testimony. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

Chapter 8.—OUT-OF-STATE WITNESSES

Sec.

23-801. Definitions.

23-802. Hearing on recall of out-of-state witnesses by State courts—Determination—Travel allowance—Penalty.

23-803. Certificate providing for the attendance of witnesses at criminal prosecutions in the District of Columbia—Travel allowance—Penalty.

23-804. Exemption from arrest.

§ 23-801. Definitions.

As used in this chapter—

(a) The term "witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(b) The word "State" includes any Territory of the United States and the District of Columbia.

(c) The word "summons" includes a subpoena, order, or other notice requiring the appearance of a witness. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 2.)

SEPARABILITY CLAUSE

Section 6 of the act of Mar. 5, 1952, 66 Stat. 16, ch. 82, section 6, provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not apply to other provisions of this Act."

SHORT TITLE

Section 1 of the act of March 5, 1952, cited to text, provided: "This Act may be cited as the 'District of Columbia Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings.'"

§ 23-802. Hearing on recall of out-of-state witnesses by State Courts—Determination—Travel allowance—Penalty.

(a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the District of Columbia certifies under the seal of such court (1) that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, (2) that a person being within the District of Columbia is a material witness in such prosecution, or grand jury investigation, and (3) that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of the municipal court for the District of Columbia, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution

is pending, or grand jury investigation has commenced or is about to commence and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting State.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the municipal court for the District of Columbia. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 3.)

§ 23-803. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia—Travel allowance—Penalty.

(a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in the District of Columbia, is a material witness in a prosecution pending in a court of record in the District of Columbia, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the United States or the District of Columbia to assure his attendance in the District of Columbia. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in the District of Columbia he shall be tendered the sum of 10 cents a mile for each mile by the or-

dinary traveled route to and from the court where the prosecution is pending or where the grand jury investigation has commenced or is about to commence, and \$5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the District of Columbia a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into the District of Columbia, fails without good cause to attend and testify as directed in the summons, he may be punished in the manner provided for the punishment of any other witness who disobeys a summons issued from the court in the District of Columbia where the prosecution has been instituted or the grand jury investigation has commenced or is about to commence. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 4.)

§ 23-804. Exemption from arrest.

(a) If a person comes into the District of Columbia in obedience to a summons directing him to attend and testify in the District of Columbia he shall not while in the District of Columbia pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the District of Columbia under the summons.

(b) If a person passes through the District of Columbia while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through the District of Columbia be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the District of Columbia under the summons. (Mar. 5, 1952, 66 Stat. 16, ch. 82 § 5.)

TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap. Sec.
6. Rehabilitation of users of narcotics..... 24-601

Chapter 1.—PROBATION

Sec.
24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

§ 24-101 [6: 424]. Probation system—Probation officers—Appointment.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-102 [6: 425]. When probation may be granted—Statement to probationer—Rules and regulations.

COMPILERS' NOTE

Section 1 of the act of June 20, 1958, Pub. L. 85-463, made the provisions of title 18, section 3651 of the U. S. Code, applicable to the United States District Court for the District of Columbia and struck out from the section the words, "except in the District of Columbia".

CROSS REFERENCE

Suspension of sentence in cases in Municipal Court, § 11-757. In the United States District Court, see title 18, section 3651, of the U. S. Code.

PARTIAL REPEAL

1958—Section 2 of the act of June 20, 1958, 72 Stat. 216, Pub. L. 85-463, provides that this section is repealed insofar as it applies to the United States District Court for the District of Columbia.

PROVISIONS REMAINING IN FORCE

1958—Section 2 of the act of June 20, 1958, 72 Stat. 216, Pub. L. 85-463, which repeals the provisions of section 24-102 insofar as same apply to the United States District Court for the District of Columbia, also provides that nothing in the act shall be construed to amend or repeal the provisions of sections 11-757 or 11-968.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some

8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

APPEAL AFTER PROBATION

A defendant, who has been convicted and placed on probation, being subject to surveillance and discipline and terms and conditions imposed on him, retains his right of appeal, whether probation follows actual imposition of sentence or suspension of imposition of sentence. *Herman August Blohm v. District of Columbia* (D. C. Mun. App. 1955, 113 A. 2d 111).

RESTITUTION

Trust funds coming into possession of Chief Probation Officer of Federal District Court in Criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. *Manley v. Butterfield* (1953, 111 F. Supp. 783).

Where defendant was not placed on probation and money which he informally gave to Probation Officer was not received to make restitution to aggrieved parties for actual damages or loss caused by offenses for which he had been convicted and court who sentenced defendant made no order in respect to restitution, money was subject to garnishment. *Id.*

RESTITUTION AS CONDITION

Restitution was a proper probationary condition, notwithstanding contention that it amounted to use of criminal process to collect civil debt. *R. Freeman v. United States* (1958, 103 U. S. App. D. C. 15, 254 F. 2d 352).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-103 [4: 426]. Investigations and reports by probation officers.

CROSS REFERENCE

Services of a psychiatrist and a psychologist available to probation officers, § 24-106.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other

citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-104 [6:427]. Discharge from or continuance of probation—Modification or revocation of order.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

EX PARTE EXTENSION

Where District of Columbia statute under which probation was extended did not require a hearing either at the time of extension or of revocation of probation, and procedure in the statute was complied with, probationer was not entitled to order setting aside revocation of extended probation on ground that extension of probation was entered ex parte. *United States v. R. Freeman* (1957, 160 F. Supp. 532).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-105 [6:428]. Quarters for probation officers—Payment of expenses.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

RIGHTS OF PROBATIONER

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

The Commissioners shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist

them in carrying out their duties: (1) In criminal cases, the judges of the district court and the probation officers of the district court and the municipal court, (2) such officers of the juvenile court of the District of Columbia as the judge thereof shall designate, (3) such officers of the Department of Corrections as the Director thereof shall designate, and (4) the Board of Parole of the District. (June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1.)

AMENDMENTS

1954—The act of August 16, 1954, amended the section by striking "(1) The probation officers" and inserting in lieu thereof "(1) In criminal cases, the judges of the district court and the probation officers".

CROSS REFERENCES

Board of Parole, § 24-201a.

Department of Corrections, § 24-441.

Investigations and reports by probation officers, § 24-103.

Juvenile Court—Physical and mental examinations and treatment of child, § 11-926.

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24-201 [6:451]. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

NOTES TO DECISIONS

JURISDICTION

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 89 U. S. App. D. C. 206, 191 F. 2d 653).

SENTENCE

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 89 U. S. App. D. C. 206, 191 F. 2d 653).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

§ 24-201a. Board of Parole—Rules and regulations.

CROSS REFERENCE

Services of a psychiatrist and a psychologist available to the Board of Parole, § 24-106.

TRANSFER OF FUNCTIONS

Reorganization Order No. 33 dated May 28, 1953 and effective June 21, 1953 established a Board of Parole under the direction and control of a Commissioner and consisting of three members for the purpose of developing and administering an effective parole system. The new Board was authorized to exercise all powers of the previously existing Board of Parole which the order abolished. All positions under the previously existing Board of Parole were transferred to the new Board including the duties, powers, and authorities of all officers and employees. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 24-201c. Applications for reduction of minimum sentence—Jurisdiction of court.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, and that his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. If a prisoner is serving a sentence for a crime for which a minimum sentence is prescribed by section 24-203(b) his minimum sentence shall not be reduced under this section below the minimum sentence so prescribed. (July 17, 1947, 61 Stat. 379, ch. 263, § 4; June 29, 1953, 67 Stat. 92, ch. 159, § 201 (b).)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding the last sentence. This amendment prevents the application of the provisions of 24-201c to reduce a minimum sentence prescribed by section 24-203 (b) below the minimum prescribed in section 24-203 (b).

EFFECTIVE DATE OF AMENDMENT

Section 201 (c) of the act of June 29, 1953, provided that the amendments contained in section 201 referring to sections 24-201c and 24-203 of the District of Columbia Code would not apply with respect to any sentence imposed for a crime committed before the date of enactment of that act.

§ 24-203 [6:453]. Imposition of indeterminate sentences authorized—Life and death sentences.

(a) Except as provided in subsections (b) and (c), in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed fifteen years' imprisonment. Nothing in sections 24-201 to 24-210 shall abrogate the power of the justice or judge to sentence the convicted prisoner to the death penalty as on June 6, 1940 or thereafter may be provided by law.

(b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of section 22-501, or of armed robbery in violation of section 22-3202 shall be not less than two years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in section 22-3201, providing for the control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of

section 22-2801, shall not be less than seven years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined. The maximum sentence in each case to which this subsection applies shall not be less than three times the minimum sentence imposed, and shall not be more than the maximum fixed by law.

(c) For a person convicted of—

(1) a violation of section 22-505 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) a violation of section 22-3203, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol), occurring after the person has been convicted of violating that section; or

(3) a violation of section 22-110 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction,

the minimum sentence imposed under this section shall not be less than one year, and the maximum sentence shall not be less than three times the minimum sentence imposed nor more than the maximum fixed by law. (July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 264, ch. 254, § 2; June 29, 1953, 67 Stat. 91, ch. 159, § 201.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding "(a) Except as provided in subsections (b) and (c)" at the beginning of the first sentence, and by adding subsections (b) and (c) providing for indeterminate sentences.

COMPILER'S NOTE

Subsection (b) of section 24-203 as set forth in the act of June 29, 1953, contains the following language: ". . . armed robbery in violation of section 810 of such Act (D. C. Code 22-3202)". Section 810 of the act of March 3, 1901, referred to, is found in the code as section 22-2901 and concerns the crime of robbery. Section 22-3202 concerns the commission of a crime while armed.

CROSS REFERENCES

Act of August 25, 1958, Pub. L. 85-752, makes amendments to titles 18 and 28 of the U. S. Code. Section 1 amends chapter 15 of title 28 by the addition of section 334 which authorizes the establishment of institutes and joint councils on sentencing, in the interest of uniformity in sentencing procedures. Section 3 of the act amends chapter 311 of title 18 of the U. S. Code by adding section 4208 which deals with the fixing of eligibility for parole at the time of sentencing and section 4 of the act amends chapter 311 of title 18 by adding section 4209 dealing with young adult offenders.

Section 6 of the act provides that sections 3 and 4 of the act shall apply in the District of Columbia, "so far as they relate to persons charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia."

Assault with intent to kill, rob, rape, or poison, § 22-501.

Committing crime when armed—Added punishment, § 22-3202.

Definition of "crime of violence", § 22-3201.

Rape—Definition and penalty, § 22-2801.

Robbery, § 22-2901.

DEFINITIONS

Section 102 of the act of June 29, 1953, 67 Stat. 91, ch. 159, provided:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

EFFECTIVE DATE

Section 201 (c) of the act of June 29, 1953, provided that the amendments contained in section 201 referring to sections 24-201c and 24-203 of the District of Columbia Code would not apply with respect to any sentence imposed for a crime committed before the date of enactment of that act.

SHORT TITLE

The act of June 29, 1953, 67 Stat. 90, ch. 159, provided that it could be cited as the "District of Columbia Law Enforcement Act of 1953".

TABLE OF CONTENTS

Section 101 of the act of June 29, 1953, 67 Stat. 90, ch. 159, sets forth a table of contents relating to the District of Columbia Law Enforcement Act of 1953.

NOTES TO DECISIONS

INDETERMINATE SENTENCE

An "indeterminate sentence" differs from a "determinate sentence" only in that the former imposes a minimum term; the good time and industrial time off provisions, however, are geared to the maximum term and the minimum term does not affect the computation. *M. Johnson v. C. H. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

JURISDICTION UPON CONDITIONAL RELEASE

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *M. Johnson v. C. H. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26)

§ 24-204 [6: 454]. Parole authorized—Conditions—Custody—Reports.

NOTES TO DECISIONS

APPLICABILITY OF STATUTE

The District of Columbia statute concerning paroles is not applicable to prisoner who is given a conditional release. *M. Johnson v. C. H. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

INDETERMINATE SENTENCE

An "indeterminate sentence" differs from a "determinate sentence" only in that the former imposes a minimum term; the good time and industrial time off provisions, however, are geared to the maximum term and the minimum term does not affect the computation. *M. Johnson v. C. H. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

JURISDICTION UPON CONDITIONAL RELEASE

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *M. Johnson v. C. H. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

TERM OF SENTENCE REDUCED

Where federal prisoner was released pursuant to provision of federal statute that a prisoner who has served term for which he was sentenced, less deductions allowed for good conduct, shall upon release be treated as if released on parole and be subject to laws relating to parole of federal prisoners until expiration of maximum term specified in sentence, released prisoner was under supervision of parole board until maximum sentence, not counting time off for good behavior, expired, as against contention that because parole law in effect when original criminal acts were committed provided for measurement of parole period by maximum sentence less good time allowance, prisoner could not be subject to conditions of parole law after his release because he had served maximum sentence less good-time allowance. *Hicks v. Reid* (1952, 90 U. S. App. D. C. 109, 194 F. 2d 327).

§ 24-205 [6: 455]. Violation of parole—Warrant—Arrest—Return to confinement.

NOTES TO DECISIONS

RETURN TO CONFINEMENT

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (1953, 110 F. Supp. 1).

§ 24-206 [6: 456]. Revocation of parole after retaking—Hearing—New parole.

NOTES TO DECISIONS

CERTIFICATE OF REVOCATION

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (1953, 110 F. Supp. 1).

JURISDICTION

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 89 U. S. App. D. C. 206, 191 F. 2d 653).

RIGHT TO COUNSEL

In proceeding for writ of habeas corpus by petitioner who had been arrested for violation of conditional release and imprisoned, where there was no showing that petitioner was advised of his right to have his counsel present at hearing before parole board respecting revocation of conditional release, record failed to disclose that petitioner had made an election not to have his counsel present at hearing. *Moore v. Reid et al.* (1957, 100 U. S. App. D. C. 373, 246 F. 2d 654).

Where person was arrested and imprisoned for violation of conditional release and brought before the District of Columbia Parole Board for hearing on revocation of conditional release, under circumstances, his failure to have counsel present at hearing was critical and ef-

fectively denied him of his statutory right to appear before board. *Id.*

Under District of Columbia statute giving a paroled prisoner an opportunity to appear before Parole Board at hearing on revocation of his parole, appearance includes right to counsel if the prisoner so elects. *Id.*

SERVICE OF SENTENCE

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 89 U. S. App. D. C. 206, 191 F. 2d 653).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

§ 24-209 [6: 459]. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia and elsewhere.

NOTES TO DECISIONS

JURISDICTION

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 89 U. S. App. D. C. 206, 191 F. 2d 653).

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Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

Chapter 3.—INSANE CRIMINALS

Sec.

24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

24-302. Commitment of mentally ill person while serving sentence.

24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the Court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

(a) Whenever a person is arrested, indicted, charged by information, or is charged in the ju-

venile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

(c) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable

future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section. (As amended, Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1.)

AMENDMENTS

1955—The act of August 9, 1955, cited to text, amended the section generally as above set out.

CROSS REFERENCE

Sections 24-301 to 24-303—Commitment and trial of mentally ill persons charged with crime.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator referred to in section 24-301 as set out in the 1951 edition of the D. C. Code was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorganization Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective April 11, 1953 by act of April 1, 1953, 67 Stat. 18, ch. 14, § 1.

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new department. It further provided that within the department the District of Columbia General Hospital is to perform all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

BURDEN OF PROOF

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 99 U.S. App. D. C. 232, 239 F. 2d 52).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

When lack of mental capacity is raised as a defense to a charge of crime, the law presumes that the defendant is sane, but as soon as some evidence of mental disorder is introduced, sanity must be proved beyond a reasonable doubt as part of prosecution's case. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

When issue of insanity is raised by introduction of "some evidence" so that presumption of sanity is no longer absolute, trier of fact must weigh the whole evidence, including that supplied by the presumption of sanity, on the issue of capacity in law of accused to commit the crime, and failure so to weigh the whole evidence on such issue is reversible error. *Id.*

COMMITMENT PROCEDURE

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *D. O. Williams v. W. Overholser, Sup't, etc.* (1958, 104 U.S. App. D.C. 18, 259 F. 2d 175).

COMPETENCY TO STAND TRIAL

Under District of Columbia law pertaining to insane criminals, any hearing must be on issue of defendant's competency to stand trial, and nothing more. *D. O. Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

CRIMINAL RESPONSIBILITY

A defendant is entitled to verdict of not guilty on ground of insanity, if jury finds that offense charged was insane act by application of any one of three tests as to

whether defendant was able to distinguish between right and wrong, able to adhere to right and refrain from doing wrong, or suffered from mental disease or defect which caused criminal act. *United States v. Fielding* (1957, 148 F. Supp. 46).

Term "disease", as used in rule that an accused is not criminally responsible if his unlawful act was product of mental disease or mental defect, means condition which is considered capable of either improving or deteriorating, and term "defect" as so used means condition which is not considered capable of improving or deteriorating and which may be either congenital, or traumatic, or the residual effect of physical or mental disease. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

An accused is not criminally responsible if his unlawful act was product of mental disease or mental defect. *Id.*

DETERMINATION ON APPEAL

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

DIRECTED VERDICT

On record presented, in robbery prosecution, it was error to deny defendant's motion for directed verdict on ground of insanity. *D. W. Satterwhite v. United States* (1959, 105 U.S. App. D.C. 398, 267 F. 2d 675).

ELIGIBILITY FOR RELEASE

The statute governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based upon certificate that such person has recovered sanity and will not in a reasonable future be dangerous to himself or others, does not, by phrase "establishing his eligibility for release", establish the test of whether particular individual, engaged in ordinary pursuits of life, is committable to mental institution under the law governing civil commitments, but requires freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future. *W. Overholser etc. v. J. D. Leach* (1958, 103 U.S. App. D.C. 289, 257 F. 2d 667).

EVIDENCE

In habeas corpus proceeding by one who had been committed to mental hospital after being found not guilty of robbery by reason of insanity, where superintendent of hospital had refused to certify that petitioner had recovered sanity and would not in reasonable future be dangerous to himself or others, evidence did not warrant release of petitioner despite opinion of two psychiatrists denying present mental disease, where seven psychiatrists agreed that petitioner was a sociopathic personality with dyssocial outlook and would be dangerous to community if released. *W. Overholser, etc. v. J. D. Leach* (1958, 103 U.S. App. D.C. 289, 257 F. 2d 667).

EVIDENCE IN PRIOR HEARING

In prosecution for intoxication, trial judge, in determining issue of defendant's competency under District of Columbia law to stand trial, could not use evidence introduced in previous hearing as to defendant's sanity where hearing was held after defendant entered plea of guilty on same charge. *D. O. Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

EVIDENCE IN PRIOR PROCEEDING

In prosecution for drunkenness evidence, which was taken in prior proceeding to determine competency of defendant to stand trial, could not be used to sustain a finding of not guilty by reason of insanity. *In re D. O. Williams* (1958, 165 F. Supp. 879).

EXPENSE OF SUPPORT

Where disability compensation due incompetent veteran was discontinued by Veterans' Administration because veteran was being cared for by government, government retained money for care of veteran, and veteran was not liable for board and maintenance at government hospital. *Silverstein v. United States* (1953, 93 U. S. App. D. C. 174, 210 F. 2d 19).

FAILURE TO REQUEST CHARGE

If it affirmatively appears on record that defendant, who pleaded not guilty by reason of insanity, did not want instruction as to effect of verdict of not guilty by reason of insanity, Court of Appeals will not regard failure of trial court to give such instruction as grounds for reversal. *A. Lyles v. United States* (1958, 103 U. S. App. D. C. 22, 254 F. 2d 725).

GOVERNING STATUTE

Where question was preliminarily raised as to whether a person charged with murder in first degree was mentally competent to stand trial, federal statute providing for a hearing before court on such questions without a jury was applicable rather than section of District of Columbia Code providing for trial of such question by jury. *United States v. Jordan* (1953, 109 F. Supp. 528, affirmed 93 U. S. App. D. C. 65, 207 F. 2d 28).

HABEAS CORPUS

Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *D. O. Williams v. W. Overholser, Sup't, etc.* (1958, 104 U.S. App. D.C. 18, 259 F. 2d 175).

Where petitioner was committed to hospital after acquittal by reason of insanity and his petition for habeas corpus failed to allege that he would not in the reasonable future be dangerous to himself or others and the hospital superintendent stated that he could not certify that the petitioner had recovered and petitioner failed to put in issue the superintendent's conclusion, district judge properly concluded that a hearing was not necessary. *J. Fielding v. Winfred Overholser, Superintendent, etc.* (1959, — U.S. App. D.C. —, 268 F. 2d 898).

ILLEGAL DETENTION

Where municipal court found accused charged with being drunk or intoxicated on a public street to be of unsound mind and committed him to mental hospital, but made no judicial determination on competency to stand trial, such failure constituted an illegal detention cognizable under writ of habeas corpus since such failure resulted in denial of a right given him by statute as well as his right, if competent, to speedy trial under the constitution. *D. O. Williams v. Dr. Overholser* (1958, 162 F. Supp. 514).

INCONSISTENCY BETWEEN STATUTES

In so far as there is a repugnancy or inconsistency between section of District of Columbia Code relating to procedure for determining whether an accused is mentally competent to stand trial, and federal statute relating to such procedure, federal statute prevailed since it is later enactment and was intended to cover subject matter comprehensively. *United States v. Jordan* (1953, 109 F. Supp. 528, affirmed 93 U. S. App. D. C. 65, 207 F. 2d 28).

If section of District of Columbia Code stating procedure to be followed by federal District Court for District of Columbia in determining an accused person's mental competence to stand trial requires a jury, it has been superseded in that respect by later statute which does not require a jury and which has general application in Federal Court throughout nation, and federal District Court for District of Columbia did not err in proceeding

under later statute without intervention of jury in determining mental competency of an accused to stand trial on murder charge. *Jordan v. United States* (1953, 93, U. S. App. D. C. 65, 207 F. 2d 28).

INSANITY VERDICT, DEFINED

It is common knowledge that verdict of not guilty means that prisoner goes free and that verdict of guilty means that he is subject to such punishment as court may impose, but it is not common knowledge that verdict of not guilty by reason of insanity means that he will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that he has recovered his sanity. *A. Lyles v. United States* (1958, 103 U. S. App. D. C. 22, 254 F. 2d 725).

Verdict of not guilty by reason of insanity means that defendant will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that defendant has recovered his sanity and will not in reasonable future be dangerous to himself or others. *Id.*

Instruction that if defendant is found not guilty on ground of insanity, it then becomes duty of court to commit him to hospital, where he will remain until he is cured, and it is deemed safe to release him, and that when such time arrives, he will be released and will suffer no further consequences from his offense, was not reversibly erroneous. *Id.*

Whenever defense of insanity is fairly raised, trial judge should instruct jury as to legal meaning of verdict of not guilty by reason of insanity. *Id.*

Jury has no concern with mental state of defendant at some future time. *Id.*

INSTRUCTIONS

Evidence of mental condition at a given time is relevant to determination of mental condition at another time not unreasonably far removed, and it might be proper to inquire as to probability that as of time of act charged, an accused's mental condition was the same as it was found to be somewhat earlier, or somewhat later, but such rule does not justify judge in warning jury that if they acquit accused who has pleaded insanity they will be releasing a dangerous man to prey upon society. *Blunt v. United States* (1957, 100 U. S. App. D. C. 266, 244 F. 2d 355).

When accused person has pleaded insanity, counsel may and judge should inform jury that if he is acquitted by reason of insanity he will be presumed to be insane and may be confined in hospital for insane as long as public safety and welfare require. *George Taylor v. United States of America* (1955, 95 U. S. App. D. C. 373, 222 F. 2d 398).

Instructions to jury relative to criminal responsibility must in substance advise jury that they may find defendant guilty only if they find, beyond reasonable doubt, from evidence and from facts fairly deducible, (1) that defendant was not suffering from diseased or defective mental condition at time of the act, or (2) that the act was not the result of such condition. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

ISSUE OF INSANITY

In determining issue whether or not indicted conduct was product of mental disease or mental defect, or whether accused acted because of mental disorder, there need be only reasonable doubt about it to entitle accused to an acquittal. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

While issue of criminal responsibility of defendant suffering from mental disease is not an issue of fact in same sense as the commission of the offense, it still is an issue of fact. *Id.*

JUDGE'S COMMENTS ON EVIDENCE

If trial judge submits to jury question of probable release of defendant at some future date from mental hospital, submits evidence to jury on that point, or comments to jury respecting speculative possibilities in that

regard, trial judge commits error. *A. Lyles v. United States* (1958, 103 U. S. App. D. C. 22, 254 F. 2d 725).

Statement by trial judge that doctor testified that on prior occasion he found no mental disorder whatever in defendant, and that defendant was a man of average intelligence, was not reversible error, though made in connection with statement to jury that if defendant should be acquitted by reason of insanity, he would be committed to a mental institution, where statement as to testimony of doctor was a remark in single sentence in middle of long charge, and trial judge did not relate testimony of doctor to time of trial or to any possible future time. *Id.*

JUDICIAL DETERMINATION, WHEN REQUIRED

Under statute trial court may or may not make a finding on whether accused is of unsound mind, but must determine whether he is mentally competent to stand trial, when objection is made to the report from hospital and a hearing is held, and if accused is found to be of unsound mind statute requires court to commit defendant to a mental hospital, and if court also determines him to be incompetent to stand trial statute requires the same commitment, but statute requires a judicial determination in the latter type of mental condition, but does not require a determination in the former. *D. O. Williams v. Dr. Overholser* (1958, 162 F. Supp. 514).

JURISDICTION

It is not the function of the district court to determine in habeas corpus proceeding, the mental competency of an accused to stand trial on a charge pending against him in the municipal court, but the only court that may determine that fact is the court having jurisdiction of such charge. *D. O. Williams v. Dr. Overholser* (1958, 162 F. Supp. 514).

JURY INSTRUCTIONS AS TO MEANING OF VERDICT

Where defendant pleads not guilty by reason of insanity, jury has right to know meaning of verdict of not guilty by reason of insanity as accurately as it knows by common knowledge the meaning of verdict of guilty and verdict of not guilty. *A. Lyles v. United States* (1958, 103 U. S. App. D. C. 22, 254 F. 2d 725).

When instruction is given jury as to effect of verdict of not guilty by reason of insanity, jury should simply be informed that such verdict means that accused will be confined in hospital for mentally ill until superintendent has certified, and court is satisfied, that accused has recovered his sanity and will not in reasonable future be dangerous to himself or to others, in which event and at which time court shall order his release either unconditionally or under such conditions as court may see fit. *Id.*

JURY TRIAL

The District of Columbia statute providing for commitment of accused found incompetent to stand trial to a mental hospital is not unconstitutional for absence of provision for jury trial since all that is required is due process which is satisfied by judicial hearing which is provided for. *D. O. Williams v. Dr. Overholser* (1958, 162 F. Supp. 514).

MOTION FOR LEAVE TO APPEAL

Where defendant's motion to vacate sentences was denied without hearing and district judge also denied defendant's application for leave to appeal in forma pauperis, defendant's motion in the Court of Appeals for leave to so appeal and for appointment of counsel would be granted in view of fact that trial judge denied such motion without hearing on erroneous grounds that competency to stand trial was not subject to collateral attack but was waived if not advanced at trial, and that defendant did not allege he was in fact mentally incompetent when tried, and that an amendment to the District of Columbia Code abrogated requirement for a judicial determination of restored competency before trial. *Blunt v. United States* (1957, 100 U. S. App. D. C. 266, 244 F. 2d 355).

POTENTIALLY DANGEROUS

Under statute concerning commitment of insane criminals to hospital, a sane person cannot be confined in a mental hospital simply because he is thought to be potentially dangerous if released and his dangerous tendencies must be attributable to an abnormal mental condition if he is to be retained in confinement. *S. Starr, Jr. v. United States* (1959, 105 U.S. App. D.C. 91, 264 F. 2d 377).

Under statute relating to commitment of insane criminals to hospital, a defendant, acquitted because of insanity and committed to mental hospital because of the verdict, may not be released if, despite some recovery, doctors certify and in the exercise of its own function the court finds he is, and in the reasonably foreseeable future will be, dangerous because of mental disease or defect. *Id*

PREJUDICIAL INSTRUCTIONS

In prosecution for housebreaking, wherein judge told jury that hospital Acting Superintendent had advised court that accused was found competent to stand trial and assist in his own defense, and after stating that court would commit accused to hospital if he were found not guilty by reason of insanity, judge added that accused would remain there until determined to be "of sound mind" by hospital authorities and that "if the authorities adhered to their last opinion on this point, he will be released very shortly", latter statement was highly prejudicial since it implied a warning that dire consequences might result from finding that accused was not guilty by reason of insanity. *Durham v. United States* (1956, 99 U. S. App. D. C. 132, 237 F. 2d 760).

PRESUMPTION OF SANITY

In prosecution for housebreaking, psychiatrist's opinion that defendant had been of unsound mind on date when crime was committed was sufficient to satisfy "some evidence" test and thereby to shift to prosecution the burden of proving defendant's sanity, though psychiatrist could not state categorically that defendant had not known right from wrong. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

Trial court's erroneous holding that there was no evidence of alleged housebreaker's mental state as of date when crime was committed, and that presumption of sanity therefore prevailed, was prejudicial and required reversal. *Id*.

PROCEDURE

Procedure which governs lunacy inquisition in case of person charged with criminal offense is different from that governing ordinary lunacy inquisition. *Evans v. United States* (D.C. Mun. App. 1951, 83 A. 2d 876).

PUBLIC POLICY, DEFINED

Policies underlying distinction in treatment between mentally responsible law breakers, who are sent to prison, and mentally irresponsible law breakers, who are sent to hospitals, are (1) that it is both wrong and foolish to punish where there is no blame and where punishment cannot correct, and (2) that community's security may be better protected by hospitalization than by imprisonment. *Williams v. United States* (1957, 102 U. S. App. D. C. 51, 250 F. 2d 19)

PURPOSE

Purpose of statute providing for mental examination of person charged with crime before trial is to determine whether prisoner is then capable of understanding the nature and object of the proceedings so as to properly conduct his defense at a trial of the charge against him. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

PURPOSE OF STATUTE

Purpose of statute pertaining to commitment to hospital of an accused who is mentally incompetent to stand trial is to prescribe procedure for determining whether an accused can understand the proceedings against him and properly assist in his defense and, in event he cannot, to provide for his confinement in a hospital instead of a jail until he can. *D. O. Williams v. Overholser, Supt., etc* (1958, 104 U.S. App. D.C. 18, 259 F. 2d 175)

Purpose of statute making it mandatory for court to commit to a mental hospital any defendant in a criminal case who is found not guilty on ground of insanity, and placing certain safeguards against release of such person from mental hospital after his commitment thereto, is to protect public and discourage unfounded pleas of insanity and statute must be construed in a manner to best effectuate those objectives. *In re Milton T. Rosenfield* (1957, 157 F. Supp. 18).

RECORD OF DETERMINATION OF COMPETENCY

Where defendant's motion for mental examination has been granted, determination of competency should be noted of record, as provided by statute. *Watson, Jr. v. United States* (1956, 98 U. S. App. D. C. 221, 234 F. 2d 42).

RIGHT TO COUNSEL

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

A lunacy inquisition, held before trial to determine if accused is capable of going to trial, is not a criminal proceeding and does not fall within ambit of the Sixth Amendment. *Id*.

SETTING ASIDE OF VERDICT

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 99 U. S. App. D. C. 232, 239 F. 2d 52).

SUFFICIENCY OF EVIDENCE

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *D. O. Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

SUFFICIENCY OF INSTRUCTIONS

In prosecution for murder, instruction that if verdict of not guilty by reason of insanity was returned defendant would be committed to mental hospital until such time as it was established that he was no longer insane, was not objectionable for failure to add that he would be kept in hospital until he would not in reasonable future be dangerous to himself or others. *R. Starr, Jr. v. United States* (1959, 105 U.S. App. D.C. 91, 264 F. 2d 377)

SUSPENSION OF PROCEEDINGS

Sole effect of statute providing for mental examination of person charged with criminal offense before trial is, in proper case, to suspend criminal proceedings during period of insanity. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

TESTS OF CRIMINAL RESPONSIBILITY

The court-formulated test of insanity that accused is not criminally responsible if his unlawful act was product of mental disease or mental defect could not be applied retrospectively but only prospectively. *Watson, Jr. v. United States* (1956, 98 U. S. App. D. C. 221, 234 F. 2d 42).

In District of Columbia, formulation of tests of criminal responsibility is entrusted to the courts, and they may adopt changes in such tests retroactively. *Durham v. United States* (1954, 94 U. S. App. D. C. 228, 214 F. 2d 862).

Whenever there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed, trial court must provide jury with guides for determining whether accused can be held criminally responsible. *Id*.

UNCONDITIONAL RELEASE

In habeas corpus proceeding seeking unconditional release from mental institution to which petitioner had

been committed after acquittal on ground of insanity, return to writ of habeas corpus filed on behalf of superintendent of mental hospital stating that psychosis from which petitioner was suffering was in remission since his readmission to hospital on a certain date did not warrant granting of petitioner's unconditional release from hospital. *In re Milton T. Rosenfield* (1597, 157 F. Supp. 18).

VERDICT, EFFECT OF

Verdict of insanity of accused given as result of lunacy inquisition spoke as of that date and was legal determination that defendant was not then mentally qualified to stand trial. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

§ 24-302. Commitment of mentally ill person while serving sentence.

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under section 24-106, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness. (As amended, Aug. 9, 1955, 69 Stat. 611, ch. 673, § 2.)

AMENDMENT

1955—The act of August 9, 1955, cited to text, amended the section generally and the amended section is set out above.

§ 24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

(a) When any person confined in a hospital for the mentally ill, charged with crime and subject to be tried therefor, shall be found competent to stand trial in the opinion of the superintendent of such hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge is pending, in accordance with the procedure specified in section 24-301, and deliver such person to the court according to its proper precept.

(b) When any person confined in a hospital for the mentally ill while serving sentence shall be restored to mental health within the opinion of the superintendent of the hospital, the superintendent shall certify such fact to the Director of the Department of Corrections of the District of Columbia and such certification shall be sufficient to deliver such person to such Director according to his request. (As amended, Aug. 9, 1955, 69 Stat. 611, ch. 673, § 3.)

AMENDMENT

1955—The act of August 9, 1955, cited to text, amended the section generally and the amended section is set out above.

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I.—PRISONS

Sec.

24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

§ 24-401 [6: 401]. Place of imprisonment—Cumulative sentences—Jurisdiction of prosecutions.

NOTES TO DECISIONS

CONSECUTIVE SENTENCES

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).

The statute providing that when punishment for offense charged may be for more than one year, prosecution shall be in the United States District Court for the District of Columbia does not preclude the Criminal Division of the Municipal Court from giving sentence imposing a 120 day confinement to take effect after expiration of District Court sentence for a distinctly different offense, though the combined sentences would run for more than a year. *Id.*

§ 24-408 [6: 408]. Commitments to Washington Asylum and Jail.

NOTES TO DECISIONS

CONFESSION, ADMISSIBILITY OF

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

§ 24-410. Detention of United States prisoners in Washington Asylum and Jail.

NOTES TO DECISIONS

SUPERINTENDENT OF DISTRICT JAIL

Superintendent of District of Columbia Jail, in so far as he was custodian of federal prisoner, was an "officer or employee of the United States", within statute authorizing direct appeal to Supreme Court from interlocutory or final judgment, decree or order of any court of the United States holding act of Congress unconstitutional in any civil action, suit or proceeding to which United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party. *Curtis Reid, Superintendent, etc. v. Clarice B. Covert* (1956, 351 U. S. 481, 76 S. Ct. 880).

§ 24-413 [6: 413]. Commitment by marshal.

NOTES TO DECISIONS

CONFESSION, ADMISSIBILITY OF

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

§ 24-414 [6: 414]. Delivery of prisoners to marshal.

NOTES TO DECISIONS

LEGAL CUSTODY

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit,

though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Tyler v. United States* (1951, 90 U. S. App. D. C. 2, 193 F. 2d 24).

§ 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

Any State of the United States or any political subdivision of any such State is authorized to purchase from the District of Columbia Reformatory located at Lorton, Virginia, at fair market prices determined by the Commissioners of the District of Columbia, gun mountings and carriages for guns for use at historic sites and for museum display purposes. Receipts from sales authorized under this section shall be deposited to the credit of the working capital fund established for the industrial enterprises at the workhouse and reformatory of the District of Columbia to the same extent and in the same manner as provided for receipts from the sale of products and services of such industrial enterprises in the last paragraph under the heading "Adult Correctional Service" in the first section of the District of Columbia Appropriation Act, 1947 (60 Stat. 514). (See 47-131, D. C. Code.) (June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1.)

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24-441. Department of Corrections created—Director.

CROSS REFERENCE

Director of Department of Corrections to designate officers of the Department to whom services of a psychiatrist and a psychologist are available, § 24-106.

TRANSFER OF FUNCTIONS

Reorganization Order No. 34 of the Board of Commissioners dated May 28, 1953 and effective June 21, 1953 established under the direction and control of a Commissioner, a Department of Corrections headed by a director. The Department was established to provide for the custody, care, discipline, and instruction of all persons committed to the Workhouse, Lorton Reformatory, Women's Reformatory, and the D. C. Jail. All positions under the previously existing Department of Corrections including the duties, powers, and authorities of all officers and employees were assigned to the new Department of Corrections and the previously existing Department was abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 24-442. Powers of Department over institutions—Rules and regulations.

TRANSFER OF FUNCTIONS

See note under section 24-441 concerning the Department of Corrections.

§ 24-447. Advances to Director, Department of Corrections.

COMPILER'S NOTE

Section 11 of the act of July 31, 1953, the District of Columbia appropriation act for the fiscal year ending June 30, 1954, increased the limit of amount authorized to be advanced from \$700 to \$1,000.

CROSS REFERENCE

For omnibus provisions authorizing the disbursing officer of the District of Columbia to advance moneys for various purposes, see section 10-103a.

REPEATED

- Act July 5, 1955, 69 Stat. 262, ch. 272, § 9.
- Act July 31, 1953, 67 Stat. 295, ch. 299, § 11.
- Act July 5, 1952, 66 Stat. 391, ch. 576, § 11.
- Act Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11.

Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

Sec.

- 24-601. Purpose.
- 24-602. Definitions.
- 24-603. Order of examination.
- 24-604. Right to counsel.
- 24-605. Examinations by physicians.
- 24-606. When hearing is required.
- 24-607. Hearing.
- 24-608. Confinement of patient.
- 24-609. Release of patient.
- 24-610. Periodic examination of released patients.
- 24-611. Patient not deemed a criminal.
- 24-613. Care and treatment of drug users—Authority of the Surgeon General.
- 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.
- 24-615. Release of Patients.

§ 24-601. Purpose.

The purpose of this chapter is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that Federal criminal laws shall be enforced against drug users as well as other persons, and this chapter shall not be used to substitute treatment for punishment in cases of crime committed by drug users. (June 24, 1953, 67 Stat. 77, ch. 149, § 1; as amended July 24, 1956, 70 Stat. 609, ch. 676, Title I, § 101 (2).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

EFFECTIVE DATE OF AMENDMENT

1956—Section 102 of the act of July 24, 1956, cited to text, provides "This title shall take effect thirty days after the date of its enactment."

POPULAR NAME

The enacting clause of the act of July 24, 1956, 70 Stat. 609, provided: "That this Act may be cited as the 'Dangerous Drug Control Act for the District of Columbia'".

PUBLIC HEALTH SERVICE FACILITIES

Act of May 8, 1954, ch. 195, 68 Stat. 79, §§ 1-4 (Public Law 355 of the 83d Congress, second session), amended the Public Health Service Act (Title 42 U. S. Code, ch. 6A) to provide for the care and treatment of noncriminal drug addicts as provided for in former sections 24-601 to 24-612 of the D. C. Code. The amendment authorized the limited use of Public Health Service facilities for a temporary period in order to afford the District of Columbia time to provide facilities to carry out the provisions of former sections 24-601 to 24-612. The act of May 8, 1954 has been included in the D. C. Code as sections 24-613 to 24-615.

SHORT TITLE

Section 101 of the act of July 24, 1956, 70 Stat. 609, amends the title of the act of June 24, 1953 (§§ 24-601 to 24-612) to read as follows: "This Act may be cited as

the 'Hospital Treatment for Drug Addicts Act for the District of Columbia'".

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-602. Definitions.

For the purpose of this chapter—

(a) The term "drug user" means any person, including a person under eighteen years of age, notwithstanding the provisions of the Juvenile Court Act of the District of Columbia [title 11, chapter 9], as amended, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(b) The term "narcotic drugs" shall have the same meaning as that given to such term by section 4731 of the Internal Revenue Code of 1954 (26 U. S. C. 4731).

(c) The term "patient" means any person ordered to appear before the Commissioners, pursuant to the provisions of section 24-603.

(d) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a Board, or their designated agent or agents. (June 24, 1953, 67 Stat. 77, ch. 149, § 2, as amended, July 24, 1956, 70 Stat. 609, ch. 676, Title I, § 101 (3).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

EFFECTIVE DATE OF AMENDMENT

1956—Section 102 of the act of July 24, 1956, cited to text, provides "This title shall take effect thirty days after the date of its enactment."

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in

an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

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JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-603. Order of examination.

(a) Whenever the Commissioners have probable cause to believe that any person within the District of Columbia, other than a person referred to in subsection (b) hereof, is a drug user, they forthwith shall order any law enforcement officer of the District of Columbia to bring that person before them, to conduct a preliminary examination, and if they find sufficient evidence of addiction, as hereinbefore defined, they shall cause that person to be placed in an institution to be designated by them for an examination by physicians pursuant to section 24-605.

(b) The Commissioners shall not order any person brought before them if the said person is charged with a criminal offense, whether by indictment, information, or otherwise, or if the said person is under sentence for a criminal offense, whether he is serving the sentence, or is on probation or parole, or has been released on bond pending appeal. (June 24, 1953, 67 Stat. 77, ch. 149, §§ 3, 4, as amended July 24, 1956, 70 Stat. 609, ch. 676, Title I, § 101 (4).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE OF AMENDMENT

1956—Section 102 of the act of July 24, 1956, cited to text, provides "This title shall take effect thirty days after the date of its enactment."

EFFECTIVE DATE

1953—Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over

juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-604. Right to counsel.

(a) A patient shall have the right to the assistance of counsel at every stage of the judicial proceeding under this chapter, and the court shall assign counsel to represent him if the patient is unable to obtain counsel.

(b) The counsel for a patient may inspect the reports of the examination made pursuant to the authority contained in section 24-605. No such report and no evidence resulting from such personal examination or evidence offered by the patient shall be admissible against him in any judicial proceeding except a proceeding under this chapter.

(c) The patient may, prior to the examination made pursuant to the provisions of section 24-605 or prior to the hearing provided for by section 24-607, waive his rights to an examination, to counsel, or to such hearing, and voluntarily submit himself to commitment pursuant to the provisions of this chapter. (June 24, 1953, 67 Stat. 78, ch. 149, § 5, as amended July 24, 1956, 70 Stat. 610, ch. 676, Title I, § 101 (7).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

EFFECTIVE DATE OF AMENDMENT

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Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even

though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-605. Examinations by physicians.

(a) Whenever the Commissioners order a patient into an institution pursuant to the provisions of section 24-603, they shall immediately appoint two qualified physicians, one of whom shall be a psychiatrist, to examine the said patient, and within five days after such appointment, each physician shall file with the United States Attorney for the District of Columbia, a written report of such examination, which shall include a statement of his conclusion as to whether the patient is a drug user.

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the United States District Court for the District of Columbia for determination and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within five days a trial by jury. (June 24, 1956, 67 Stat. 78, ch. 149, § 6, as amended July 24, 1956, 70 Stat. 610, ch. 676, Title I, § 101 (5).)

AMENDMENTS

Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

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EFFECTIVE DATE OF AMENDMENT

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NOTES TO DECISIONS

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JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-606. When hearing is required.

If, in a report filed pursuant to section 24-605, either of the examining physicians states that the

patient is a drug user, or that he is unable to reach any conclusion by reason of the refusal of the patient to submit to thorough examination, the court shall conduct a hearing upon petition of the United States Attorney in the manner provided in section 24-607. (June 24, 1953, 67 Stat. 78, ch. 149, § 7, as amended July 24, 1956, 70 Stat. 610, ch. 676, Title I, § 101 (6).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

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JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 130 F. Supp. 864).

§ 24-607. Hearing.

(a) Upon the evidence introduced at a hearing held for that purpose the court shall determine whether the patient is a drug user. The hearing shall be conducted without a jury unless, before such hearing and within five days after the date on which the petition is filed pursuant to section 24-605, a jury is demanded by the patient or by the United States Attorney for the District of Columbia. Each patient concerning whom a report is filed shall be detained at such place as the Commissioners may designate until the completion of such hearing or until released as provided in section 24-605 (b).

(b) The rules of evidence applicable in civil judicial proceedings shall be applicable to hearings pursuant to this section, including the right of the patient to present evidence in his own behalf and to subpoena and cross-examine witnesses. However, no patient examined pursuant to the provisions of this chapter, shall be permitted at any hearing ordered pursuant to this section to object to the submission of testimony concerning such examination on the

ground of privilege. (June 24, 1953, 67 Stat. 78, ch. 149, § 8, as amended July 24, 1956, 70 Stat. 610, ch. 676, Title I, § 101 (8).)

AMENDMENTS

Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

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NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

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JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-608. Confinement of patient.

If the court finds the patient to be a drug user, it may commit him to a hospital designated by the patient or the Commissioners and approved by the court, to be confined there for rehabilitation until released in accordance with section 24-609. In the event a patient elects to designate a hospital to which he wishes to be committed, he shall be required to satisfy the court that such hospital has medical, rehabilitation, and security facilities comparable to the institutions designated by the Commissioners and, in addition, the cost of such hospitalization shall be borne by the patient. The head of the hospital shall submit written reports within such periods as the court may direct, but no longer than six months after the commitment and for successive intervals of time thereafter, and state reasons why the patient has not been released. (June 24, 1953, 67 Stat. 79, ch. 149, § 9, as amended July 24, 1956, 70 Stat. 611, ch. 676, Title I, § 101 (9).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 603, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

EFFECTIVE DATE OF AMENDMENT

1956—Section 102 of the act of July 24, 1956, cited to text, provides "This title shall take effect thirty days after the date of its enactment."

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

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§ 24-609. Release of patient.

(a) When the head of the hospital to which the patient is committed finds that the patient appears to be no longer in need of confinement for treatment purposes, or has received maximum benefits, he shall give notice to the judge of the committing court, and said patient shall be delivered to the said court for such further action as the court may deem necessary and proper under the provisions of this chapter.

(b) The court, upon petition of the patient after confinement for one year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it shall order the patient released, in accordance with the provisions of section 24-610. (June 24, 1953, 67 Stat. 79, ch. 149, § 10, as amended July 24, 1956, 70 Stat. 611, ch. 676, Title I, § 101 (10).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

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Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

§ 24-610. Periodic examination of released patients.

(a) For two years after his release, the patient shall report to the Commissioners at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Commissioners determine that the person examined is a drug user, they shall then order the patient into an institution in accordance with the provisions of this chapter.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) hereof, the United States attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of this chapter. (June 24, 1953, 67 Stat. 79, ch. 149, § 11, as amended July 24, 1956, 70 Stat. 611, ch. 676, Title I, § 101 (11).)

AMENDMENTS

1956—Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as section 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

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NOTES TO DECISIONS

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Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even

though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

§ 24-611. Patient not deemed a criminal.

The patient in any proceedings under this chapter shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction. (June 24, 1953, 67 Stat. 79, ch. 149, § 12, as amended July 24, 1956, 70 Stat. 612, ch. 676, Title I, § 101 (12).)

AMENDMENTS

Section 101 of the act of July 24, 1956, 70 Stat. 609, amended the act of June 24, 1953, 67 Stat. 77, classified as sections 24-601 to 24-612, generally and the said act as so amended is herein set out as sections 24-601 to 24-611.

EFFECTIVE DATE

Section 13 of the act of June 24, 1953, provided: "This Act shall become effective six months after the date of its approval".

EFFECTIVE DATE OF AMENDMENT

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§ 24-613. Care and treatment of drug users—Authority of the Surgeon General.

The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who voluntarily submit themselves for treatment, addicts who have been or are hereafter convicted of offenses against the United States, including persons convicted by general courts-martial and consular courts, and addicts who are committed to the Service or to a hospital thereof pursuant to section 24-614. Such care and treatment shall be provided at hospitals of the Service especially equipped for the accommodation of such patients and shall be designed to rehabilitate

such persons, to restore them to health, and where necessary, to train them to be self-supporting and self-reliant. Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Commissioners of the District of Columbia, or their designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person. (July 1, 1944, 58 Stat. 698, ch. 373, § 341; May 8, 1954, 68 Stat. 80, ch. 195, § 3; as amended July 24, 1956, 70 Stat. 622, ch. 676, Title III, § 302 (a).)

AMENDMENTS

Section 302 (a) of the act of July 24, 1956, cited to text, amended the section by adding the last sentence as above set out.

Section 303 of the act of July 24, 1956, cited to text, amended the section set out below under the heading "Statement of Purpose" to read as it is now set out as a note under the same heading.

1954—The act of May 8, 1954, amended section 341 of the Public Health Service Act (42 U. S. C. § 257), which is set out in the D. C. Code as this section, by adding the reference to addicts committed pursuant to section 24-614.

STATEMENT OF PURPOSE

Section 1 of the act of May 8, 1954, as amended by the act of July 24, 1956, section 303, reads as follows:

"SECTION 1. In order to afford the District of Columbia the facilities required to carry out the act of June 24, 1953 (Public Law 76, Eighty-third Congress), as amended, and to help it meet its responsibility for the detention, care, and treatment of noncriminal narcotic addicts, it is hereby declared to be the purpose of this act to authorize the limited use of suitable Public Health Service facilities at the expense of the District of Columbia for such detention, care, and treatment."

CROSS REFERENCE

For relevant provisions of Public Health Service Act, see sections 257, 258, 259, 260, and 261 of Title 42, U. S. Code.

Narcotic addicts; care and treatment, section 257, Title 42, U. S. Code.

NOTES TO DECISIONS

DRUG USERS' ACT NOT CRIMINAL STATUTE

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (1955, 134 F. Supp. 864)

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JUVENILES

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with section 248 (b) of title 42 U. S. Code, any addict who is committed, under the provisions of sections 24-601 to 24-612, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless (1) he is committed prior to July 1, 1956; and (2) at the time of his commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than fifty; and (3) suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) shall be discharged therefrom (1) upon order of the United States District Court for the District of Columbia, or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the United States District Court for the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of sections 24-601 to 24-612.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a), the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities of the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation

to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged. (May 8, 1954, 68 Stat. 80, ch. 195, § 2.)

UNITED STATES CODE REFERENCE

Persons committed from District of Columbia, section 260a of Title 42, U. S. Code.

NOTES TO DECISIONS

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Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-615. Release of patients.

For purposes of sections 24-613 to 24-615, an individual shall be deemed cured of his addiction and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service. (May 8, 1954 68 Stat. 81, ch. 195, § 4.)

UNITED STATES CODE REFERENCE

Release of patients, section 261a, Title 42, U.S. Code.

NOTES TO DECISIONS

JUVENILE ACT NOT REPEALED BY DRUG USERS' ACT

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Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

PART V

GENERAL STATUTES

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL ACT

Sec.

25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

§ 25-103 [20:1903]. Definitions.

NOTES TO DECISIONS

EVIDENCE, SUFFICIENCY

In prosecution for keeping for sale and selling alcoholic beverages without license, testimony of officers that from their experience in tasting and smelling liquor, it was their conclusion that liquid purchased at club was liquor, and that they tasted liquid and it contained whiskey, was sufficient proof of corpus delicti, notwithstanding failure to prove alcoholic content by chemical analysis. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

"HOTEL"

Requirement in District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was within licensing authority of Commissioners of the District of Columbia, *Courembis v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 372, 193 F. 2d 18).

Requirement of District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was not arbitrary. *Id.*

Where plaintiff's application for building permit showed that he wished to operate a hotel but two weeks before plaintiff got his permit Commissioners of District of Columbia had given public notice of a hearing with regard to proposed new licensing regulations, and a month after he got permit and several months before he completed his alterations, new licensing regulations were adopted providing that a building must have at least 30 bedrooms to be licensed as a hotel, and it did not appear that plaintiff was prevented from continuing to use his 18 bedroom property as before, there was no basis for estoppel against refusal to grant license to operate a hotel. *Id.*

JUDICIAL NOTICE

From testimony that officers, from their experience in tasting and smelling liquor, concluded that liquid purchased was liquor, and that they tasted liquid and that it contained whiskey, courts may take judicial notice of alcoholic content of whiskey. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

§ 25-104 [20:1904]. Alcoholic Beverage Control Board—Appointment—Term—Salary—Employees.

TRANSFER OF FUNCTIONS

Reorganization Order No. 35 of the Board of Commissioners dated June 16, 1953 established under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members appointed by the Board of Commissioners. The order provided that all powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the previously existing Alcoholic Beverage Control Board would thereafter be vested in the new Alcoholic Beverage Control Board, and the members of the previous board were reappointed to the new board. The order abolished the

previously existing Alcoholic Beverage Control Board. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

PROCEDURAL DUE PROCESS

In hearing on application for renewal of liquor license, which alcoholic beverage control board refused to renew on ground that applicant was not generally fit and did not have necessary good moral character, which conclusion was based in part upon alleged conspiracy with bootleggers not to make bookkeeping entries required by Internal Revenue Code, applicant's cross-examination of one of the alleged bootleggers, on question of bias, was not so restricted as to constitute lack of procedural due process. *Minkoff v. Payne et al.* (1953, 93 U. S. App. D. C. 123, 210 F. 2d 689).

SUIT TO ENJOIN BOARD

Where there was no genuine issue of material fact as to whether alcoholic beverage control board had discriminated against liquor licensee in deciding not to renew his license, suit to enjoin board from putting such decision into effect was properly resolved by summary judgment procedure. *Minkoff v. Payne et al.* (1953, 93 U. S. App. D. C. 123, 210 F. 2d 689).

§ 25-106 [20:196]. Jurisdiction of board over licenses—Appeal from revocation—Duties.

NOTES TO DECISIONS

PRELIMINARY INJUNCTION

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's grant of application for transfer of liquor license. *Palisades Citizens Association Inc., et al. v. F. E. Weakly et al.* (1958, 166 F. Supp. 591).

PROCEDURE FOR RENEWAL OF LICENSE

In application for renewal of liquor license, board properly followed procedure applicable to application for license in first instance, rather than that prescribed for revocation or suspension of license already issued. *Minkoff v. Payne et al.* (1953, 93 U. S. App. D. C. 123, 210 F. 2d 689).

REVIEW BY COMMISSIONERS

Decision of alcoholic beverage control board rejecting application for renewal of liquor license was not reviewable by commissioners of the District of Columbia. *Minkoff v. Payne et al.* (1953, 93 U. S. App. D. C. 123, 210 F. 2d 689).

RIGHT OF REVIEW

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc., et al. v. F. E. Weakly et al.* (1958, 166 F. Supp. 591).

§ 25-107 [20:1907]. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Commissioners are further authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25-111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises. The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice or advertisement, to prohibit

the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

CROSS REFERENCE

Authority of commissioners to make rules and regulations relating to act of March 31, 1956, see section 47-1595a.

§ 25-109 [20:1909]. Sale without license prohibited—Exceptions.

(a) No individual, partnership, association, or corporation shall, within the District of Columbia, manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in section 25-131.

It shall be unlawful for any person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, and where facilities are especially provided and service is rendered for the consumption of alcoholic beverages, who does not possess a license under this chapter, to permit the consumption of such alcoholic beverages on such premises.

(b) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in section 25-111, subsection (k).

Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer

or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the alcoholic beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9; June 29, 1953, 67 Stat. 102, ch. 159, § 404 (b).)

EFFECTIVE DATE

Section 404 (k) of the act of June 29, 1953, provided that subsection (b) [amending section 25-109] and subsection (h) [amending section 25-128] should take effect sixty days after the enactment of the act.

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding a new paragraph at the end of subsection 25-109 (a) making unlawful the consumption of alcoholic beverages on unlicensed premises as therein described.

CROSS REFERENCE

Presence or employment in illegal establishments, § 22-1515.

NOTES TO DECISIONS

ADMISSIBILITY OF EVIDENCE OF CONVICTION IN CIVIL ACTION

Where sole issue determined by convictions of corporate tenant and its officers was sale of liquor on leased premises in violation of statute, judgments of conviction were admissible as prima facie evidence of unlawful use of premises by tenant in subsequent civil suit by tenant. *Stagecrafters' Club v. District of Columbia Division of American Legion* (1953, 111 F. Supp. 127).

CROSS-EXAMINATION

In prosecution for keeping and selling alcoholic beverages without license, defendant, whose counsel elicited police detective's testimony that he did not ask defendant for written statement because he knew from defendant's record that she had been around and would not have given him such a statement in answer to question on cross-examination as to whether reason why witness did not ask for statement was because defendant denied her guilt at all times, was in no position to complain of such testimony as to defendant's record on appeal from judgment on verdict of conviction. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

EVIDENCE, ADMISSIBILITY

Where police officer under assumed name joined non-profit social club operating "after-hours bottle club" which would not have given him membership card had they known he was police officer and purpose of his mission, but membership was available to any one who walked up to door and paid membership fee, and officer did not obtain membership card surreptitiously, there was no fraudulent entry or entry by false representation which would warrant suppression of evidence in prosecution for keeping for sale and selling alcoholic beverages without license. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

EVIDENCE, SUFFICIENCY

Evidence sustained conviction for selling and keeping for sale alcoholic beverages without a license. *Turner v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 149).

In prosecution for unlicensed sale of alcoholic beverages, evidence established sufficient proof of continuous possession by the Government of the bottled evidence by the Bureau of Internal Revenue so as to justify denial of directed verdict of acquittal though there was no testimony by receiving clerk as to his possession and disposition of the bottles. *Kelly v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 308).

In prosecution for keeping for sale and selling alcoholic beverages without license, evidence was sufficient to submit case to jury. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

FORFEITURE OF LEASE

Landlord's acceptance of rent after tenant's conviction for selling liquor on leased premises without license did not constitute waiver of landlord's right, under lease, to forfeit lease for breach of tenant's covenant that premises would not be used for any unlawful purpose in view of facts that landlord had specifically reserved its right to declare a forfeiture if conviction were affirmed on appeal and that no rent was accepted after affirmance of conviction. *Stagecrafters' Club v. District of Columbia Division of American Legion* (1953, 110 F. Supp. 481).

INSTRUCTIONS

In prosecution for keeping and selling alcoholic beverages without license, instructions to jury that seller's transfer of goods to buyer through means of another person in seller's presence is a sale, in answer to jury's inquiry as to whether accused must have physically delivered merchandise and physically received money therefor from consumer to be considered the seller, was not erroneous as peremptorily directing jury to find defendant guilty nor as misleading or inaccurate. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

JOINT TRIAL

In prosecution for violations of the Alcoholic Beverage Control Law, defendants were properly charged and tried together since it would be assumed that average jury would not be so bereft of intelligence and discrimination that it would be unable to properly decide if any of the defendants had violated law. *Simato et al. v. District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 376).

MOTION TO QUASH INFORMATION

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, testimony of officers that they bought drinks of whiskey at club was sufficient to warrant denial of motion, apart from allegedly improperly obtained evidence under warrant. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

RES GESTAE

In prosecution for keeping for sale and selling alcoholic beverages without a license, Municipal Court properly permitted police officer, who participated in arrest of defendant, to testify that, when defendant was arrested, defendant complained that the police had arrested him before for selling whiskey, since the statement by the defendant to the police officer was part of the res gestae and admissible though it tended to show the commission of an independent crime. *Jackson v. District of Columbia* (D.C. Mun. App. 1956, 125 A. 2d 50).

RIGHT TO SEARCH

Where police officer purchased whiskey from certain party with marked money in attempt to locate his source of supply, and as purchase was being completed, another officer appeared with warrant for party's arrest, arrested party stated he had purchased the whisky from defendant, and officers searched defendant, found part of the marked money on him, and arrested him, officers had no right to search defendant, and evidence found in such search should have been excluded in prosecution for keeping for sale and selling alcohol beverage without license to do so. *Arthur Smallwood v. District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 599).

Right to search person incident to lawful arrest is beyond question, but search of body is illegal when purpose of search is to discover grounds as yet unknown for arrest or accusation. *Id.*

WITNESSES, COMPETENCY OF

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, fact that officers who testified that they bought drinks at club were unable to recall from unprompted memory, and that parts of testimony gave conclusions of law, would not justify calling officers legally incompetent. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

§ 25-110 [20: 1910]. Licenses — Applications for — To whom granted—Records.

The Board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor, for the manufacture, sale, offer for sale, consumption on premises of clubs where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, or solicitation of orders for sale of alcoholic beverages within the District of Columbia. The Board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10; June 29, 1953, 67 Stat. 103, ch. 159, § 404.)

AMENDMENTS

1953—Act of June 29, 1953, amended section so as to empower the Board to issue licenses to permit the consumption of alcoholic beverages on premises of clubs where food, non-alcoholic beverages or entertainment are sold or provided for compensation.

§ 25-111 [20: 1911]. License classifications—Fees.

Licenses issued under authority of this chapter shall be of twelve kinds: (a) *Manufacturer's license, class A.*—To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. The annual fee for such license for a rectifying plant shall be \$5,775; for a distillery shall be \$5,775; and for a winery shall be \$825: *Provided, however,* That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 per centum of such alcohol is sold for nonbeverage purposes, the annual fee shall be \$1,650. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50 per centum or more of said alcohol for beverage purposes, he shall pay to the Collector of Taxes the difference between the license fee paid and the license fee for a distiller of spirits.

(b) *Manufacturer's license, class B.*—To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the

beer manufactured under such license to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be \$4,125.

(c) *Wholesaler's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and non-alcoholic beverages. The annual fee for such license shall be \$2,475.

(d) *Wholesaler's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold. The annual fee for such license shall be \$1,250.

(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$1,250.

(f) *Retailer's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$165.

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of restaurants and passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for a bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed

container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$1.50 per month or \$15 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$50.

(i) *Retailer's license, class E.*—Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from the place therein described, beverages in sealed packages, not to exceed one quart each, for medical purposes, and only upon prescription of a duly-licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word "Canceled" together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be \$40.

(j) *Retailer's license, class F.*—Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such permits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be \$7.50 per day.

(k) *Solicitor's licenses.*—Such a license shall authorize the licensee to offer for sale to or solicit orders from licensees for the sale of any beverage on behalf of the vendor whose name appears upon

such license and whom the solicitor represents. The name of only one vendor shall appear upon the license but if solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents.

The annual fee for such license shall be \$100.

(1) *Consumption License for a Club.*—Such a license shall be issued only for a club. The word “club” within the meaning of this paragraph is a corporation for the promotion of some common object (not including corporations organized or conducted for any commercial or business purpose, or for money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year, and no officer, agent, or employee of the club is paid, directly or indirectly, or receives in the form of salary or other compensation, any profit from the conduct and operation of the club beyond the amount of such salary as may be fixed and voted by the members or by its directors or other governing body. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. Such a license shall authorize the holder thereof to permit consumption of alcoholic beverages on such parts of the licensed premises as may be approved by the Board. The annual fee for such a license shall be \$100.

Nothing in this chapter shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended (32 Stat. 622, ch. 1352, § 7). (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by changing “eleven” to “twelve” in the first sentence, and by adding new section (1) relating to consumption licenses for clubs.

CROSS REFERENCE

For provisions authorizing holders of wholesaler's licenses, class A, to sell and deliver alcoholic beverages to embassies, diplomatic representatives and certain international organizations, see section 2-146 of the Alcoholic Beverage Control Regulations.

§ 25-115 [20: 1914]. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from Government warehouses—Bond—Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with

the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is a citizen of the United States, not less than twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

4. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property

in the neighborhood of the premises for which the license is desired.

(b) Before granting a license under section 25-111 (l) or a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, or the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public advertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall be deemed guilty of a violation of this charter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D or a license issued under section 25-111 (l) to be issued for a hotel or club, or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however,* That none of the provisions of this chapter shall prevent the

Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided,* That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioners or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327-329, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by changing the first sentence of subsection (b) and the first sentence of subsection (c), so as to refer to licenses granted under new subsection (l) of section 25-111 also added by the act.

NOTES TO DECISIONS

ACTION TO SET ASIDE LICENSE

Under statute forbidding alcoholic beverage control board of District of Columbia to issue license for new location to operate liquor store if the owners of a majority of the real property within a radius of 600 feet of the place for which the license is desired object to the granting of such license, individuals who own property within 600-foot radius of new location and an association having members who own property within such 600-foot radius had standing to bring action against licensee and members of the board to set aside license for new location. *MacArthur Liquors Inc. v. Palisades Citizens Ass'n Inc. et al., Palisades Citizens Ass'n Inc., et al. v. F. E. Weakly et al., Members of A.B.C. Board, etc., F. E. Weakly et al., Members of A.B.C. Board, etc., v. Palisades Citizens Ass'n Inc.* (1959, 105 U.S. App. D.C. 180, 265 F. 2d 372).

PRELIMINARY INJUNCTION

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's

grant of application for transfer of liquor license. *Palisades Citizens Association Inc. et al. v. F. E. Weakly et al.* (1958, 166 F. Supp. 591).

PROCEDURAL ERRORS

Where owners within 600-foot radius of proposed new location of retail liquor store, objected to granting license for the new location on District of Columbia alcoholic beverage control board's form meant for use in connection with statute requiring board, before granting license, to consider wishes of persons residing or owning property in neighborhood of premises rather than on board's form meant for use in connection with statute forbidding board to issue license for new location if owners of majority of real property within 600-foot radius of new location object, the board should not have refused to correct the owners signing such form but should have either ignored the formal error or allowed it to be corrected. *MacArthur Liquors, Inc. v. Palisades Citizens Ass'n Inc., et al., Palisades Citizens Ass'n Inc., et al. v. F. E. Weakly et al., Members of A.B.C. Board, etc., F. E. Weakly et al., Members of A.B.C. Board, etc. v. Palisades Citizens Ass'n Inc.* (1959, 105 U.S. App. D.C. 180, 265 F. 2d 372)

RIGHT OF REVIEW

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc. et al. v. F. E. Weakly et al.* (1958, 166 F. Supp. 591).

WISHES OF NEIGHBORHOOD

In license transfer case, question is whether wishes of neighborhood and character of premises warrant granting of liquor license for locality; and previous location and history of store are beside the point. *Palisades Citizens Association Inc. et al. v. F. E. Weakly et al.* (1958, 166 F. Supp. 591).

§ 25-116 [20: 1915]. Issuing licenses in certain districts restricted.

(a) No retailer's licenses except of classes B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel, apartment house, or club, and then only when the entrance to such restaurant or tavern is entirely inside of the hotel, apartment house, or club and no sign or display is visible from the outside of the building.

(b) No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations.

(c) The provisions of subsection (a) of this section shall not apply in any case where an application is made for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential use during a period when a license

of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(d) The provisions of subsection (b) of this section shall not apply in any case where an application is made for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential- or first commercial-use during a period when a license of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(e) Nothing contained in this section shall be construed as entitling a licensee to any preferential treatment or be construed as making inapplicable any provision in any other section of this chapter, in any case where an application is made pursuant to this section for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district, or for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district, as such districts are defined in the zoning regulations and shown in the official atlases of the Zoning Commission, and the applicant for the issuance or transfer of any of the said licenses is the holder of a similar license for any of the said places of business in effect on the date the application for the new license, or transfer, is filed. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552; May 22, 1958, 72 Stat. 132, Pub. L. 85-423, § 1.)

AMENDMENTS

1958—Act of May 22, 1958, cited to text, amended the section by inserting (a) and (b) in front of paragraphs one and two and adding subsections (c), (d), and (e).

The June 16, 1934, amendment added class B to the exception.

CROSS REFERENCE

See compiler's note to § 25-132.

§ 25-121 [20: 1920]. Sale to minors or intoxicated persons—Liability of licensee.

Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages.

No person being the holder of a license issued under section 25-111 (l) shall permit on the licensed premises the consumption of alcoholic beverages, with the exception of beer and light wines, by any person under the age of twenty-one years, or permit the consumption of beer and light wines by any person under the age of eighteen years, or the consumption of any beverage by any intoxicated person, or any person of notoriously intemperate habits, or any person who appears to be intoxicated; and ignorance of the age of any such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to permit the consumption of any beverage on any premise licensed under section 25-111 (l). (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404.)

AMENDMENTS

1953—Act of June 29, 1953, amended section by adding an additional paragraph to extend existing restrictions to licenses issued under subsection (l) of section 25-111.

§ 25-124 [20:1923]. Beverage tax — Stamps — Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$1.25 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of \$1.25 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

* * * * *

(c) Said taxes on spirits or alcohol shall be collected and paid by the affixture of a stamp or stamps secured from the Commissioners or their designated agent denoting the payment of the amount of the tax imposed by this chapter upon such beverage,

such affixture to be upon the immediate container of the beverage, unless the Commissioners shall by regulation permit otherwise. The Commissioners or their designated agent shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the taxes imposed by this chapter upon spirits or alcohol, and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(d) Said taxes on wine (wine containing 14 per centum or less of alcohol by volume, wine containing more than 14 per centum of alcohol by volume, champagne, sparkling wine, and any wine artificially carbonated) shall be collected and paid in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of wine subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of wine subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any wine other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the wine for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the wine to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such wine during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the wine by the retail licensee, be marked "canceled" and retained by him.

(3) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes on wine imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in their judgment such action is necessary to prevent frauds or evasions.

(e) Upon taxable spirits of alcohol manufactured in the District of Columbia by a manufacturer licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of

the spirits of alcohol from the place of business or warehouse of the said manufacturer for delivery to a purchaser. Upon taxable spirits of alcohol imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the spirits of alcohol from the place of business or warehouse of the said wholesaler for delivery to a purchaser. Upon spirits of alcohol purchased outside the District of Columbia by any retailer licensed under this chapter, the stamps required by this chapter shall be affixed within twenty-four hours (excluding Sunday from the count) after the spirits of alcohol is received at the licensed premises of said retailer and before said spirits of alcohol is sold by such retailer.

* * * * *

(i) The possession by any licensee of any spirits of alcohol after its removal from the licensed premises of a manufacturer or wholesaler within the District of Columbia or after twenty-four hours (Sunday being excluded from the count) after its receipt from outside the District of Columbia, upon which the tax required has not been paid, shall render such spirits of alcohol liable to seizure wherever found, and to forfeiture by the District of Columbia. And the absence of the proper stamps from any container (or wrapper if such be permitted) after the time at which the affixture of the stamp is required by this chapter shall be notice to all persons that the tax has not been paid thereon and shall be prima facie evidence of the nonpayment thereof. Such spirits of alcohol so liable to forfeiture shall be proceeded against in the District Court of the United States for the District of Columbia by the corporation counsel of the District of Columbia, and if condemned, the said spirits of alcohol shall be disposed of by destruction or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, and all such proceedings shall be at the suit of and in the name of the District of Columbia.

* * * * *

(k) No taxing provision of subsection (a), (c), (e), and (i) of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine ves-

sel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wine (wine containing 14 per centum or less of alcoholic content, wine containing more than 14 per centum of alcoholic content, champagne, sparkling wine and any wine artificially carbonated) sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this chapter upon the spirits or alcohol set forth in said report and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such wines as set forth in said report.

(Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; May 27, 1949, 63 Stat. ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, § 801; as amended March 31, 1956, 70 Stat. 81, 82, ch. 154, §§ 301, 302; July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, §§ 1-7.)

AMENDMENTS

1958—Section 1 of the act of July 25, 1958, cited to text, amended subsection (c) to read as above set out.

Section 2 of the act of July 25, 1958, cited to text, amended subsection (d) to read as above set out.

Section 3 of the act of July 25, 1958, cited to text, amended subsection (e) by striking out the words "beverage" and "beverages" wherever they appear and substituting in lieu thereof the words "spirits of alcohol".

Section 4 of the act of July 25, 1958, cited to text, amended subsection (i) by striking out the words "beverage" and "beverages" and substituted in their place the words "spirits of alcohol".

Section 5 of the act of July 25, 1958, cited to text, amended the last sentence of subsection (k) to read as set out above.

1956—Section 301 of the act of March 31, 1956, cited to text, amended subsection (a) to read as above set out.

Section 302 (a) of the act of March 31, 1956, cited to text, amended the second sentence of subsection (e) to read as above set out.

Section 302 (b) of the same act struck out in subsection (k) "and nontaxable light wines".

1954—The act of May 18, 1954, amended subsection (a) by increasing the tax under item (1) from 15 to 20 cents, that under item (2) from 22½ to 30 cents, and that under item (3) from 75 cents to 1 dollar. Other minor changes were made to phraseology and punctuation.

CONSTRUCTION OF ACT OF JULY 25, 1958, AND DELEGATION OF AUTHORITY

Section 6 of the act of July 25, 1958, cited to text, provides as follows:

"Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commis-

sioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

EFFECTIVE DATE OF AMENDMENTS

1958—Section 7 of the act of July 25, 1958, cited to text, makes the act effective on the first day of the calendar month beginning not less than sixty days after the date of approval of the act. [Oct. 1, 1958.]

1956—Section 308 of the act of March 31, 1956, makes the enactments contained therein effective on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this act, which would make the date May 1, 1956.

1954—Section 806 of the act of May 18, 1954, provided, concerning title VIII, sections 801 to 806 as follows:

"SEC. 806. The provisions of this title shall become effective on the day following the approval of this Act."

APPLICABILITY TO OFFICERS OR AGENCIES OF DISTRICT

Section 603 of the act of March 31, 1956, Public Law 460, ch. 154, a part or parts of which are classified to section 25-124 provides as follows: "Wherever any officer or agency of the District, other than the Commissioners of the District of Columbia, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan No. 5 of 1952."

CROSS REFERENCES

Authority of commissioners to make rules and regulations relating to act of March 31, 1956, see section 47-1595a.

Redemption of cigarette or alcoholic-beverage tax stamps, § 47-2811.

TRANSITORY PROVISIONS OF ACT OF MAY 18, 1954

In order to provide for the initial application of the amendments of the act of May 18, 1954, sections 802 and 803 of the act provided for declarations by dealers and the payment of taxes due by reason of the increases now contained in § 25-124. Those sections are as follows:

"SEC. 802. Within ten days after the effective date of this title, every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act [chapter 1 of title 25] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, [May 19, 1954] or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954], and shall, within fifteen days after the effective date of his title, [May 19, 1954] pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title, [chapter 1 of title 25] represented by such stamps.

"SEC. 803. Within ten days after the effective date of this title, [May 19, 1954] every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act [chapter 1 of title 25] shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective [May 19, 1954] and shall state the number of each kind and denomination of stamps necessary for the

stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, [May 19, 1954] shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954]) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title [May 19, 1954] pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, [chapter 1 of title 25] represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, [May 19, 1954] such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, [chapter 1 of title 25] such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, [chapter 1 of title 25] represented by such stamps."

Section 805 of the act provided:

"Any violation of the provisions of this title shall constitute a violation under the Alcoholic Beverage Control Act and regulations promulgated pursuant thereto."

For penalties for violations of the Alcoholic Beverage Control Act see section 25-132.

TRANSITORY PROVISIONS OF ACT OF MARCH 31, 1956

SEC. 303. Within ten days after the effective date of this title, every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title, represented by such stamps.

SEC. 304. Within ten days after the effective date of this title, every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except

(1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne, sparkling wine and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps.

SEC. 306. Every holder of a manufacturer's, wholesaler's, or retailer's license under said District of Columbia Alcoholic Beverage Control Act shall keep and preserve for a period of six months after the effective date of this title the inventories or other records made which form the basis for the information furnished on the sworn statements required to be filed under this title.

SEC. 307. Any violation of the provisions of this title shall constitute a violation under the District of Columbia Alcoholic Beverage Control Act and regulations promulgated pursuant thereto.

§ 25-128 [20:1928]. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in or upon any premises where food, non-alcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises except premises licensed under section 25-111 (l); or in any place

to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under section 25-111 (l) of this chapter has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter. No such person shall be drunk or intoxicated in any street, alley, park, or parking; or in any vehicle in or upon the same or in any place to which the public is invited, or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days, or both. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404 (h).)

AMENDMENTS

1953—Act of June 29, 1953, revised subsection (a) to refer to subsection (l) of section 25-111. Subsection (b) was amended so as to eliminate provisions which increased the penalty in the case of repeated offenses, and substituting a provision relating to imprisonment for ninety days or the fine of \$100 or both.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 404 (k) of the act of June 29, 1953, provided that subsection (b) [amending section 25-109 of the D. C. Code] and subsection (h) [amending section 25-128 of the D. C. Code] should take effect sixty days after the enactment of the act.

NOTES TO DECISIONS

SUFFICIENCY OF EVIDENCE

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *D. O. Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

§ 25-129 [20:1929]. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of The Municipal Court for the District of Columbia or by a United States commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, sold, or consumed in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, selling, or consumption may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant can not be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their

affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the police court.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years.

(o) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States Government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the court, upon the conviction of the accused, shall order a sale of said property at public auction and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29; June 29, 1953, 67 Stat. 104, ch. 159, § 404 (i).)

AMENDMENTS

1953—Act of June 29, 1953, amended the section by substituting the words "Municipal Court for the" for the words "police court of the" in the first sentence, and by replacing the capital "C" in commissioner with a small "c". The sentence was also amended so as to refer to alcoholic beverages consumed or intended for consumption in violation of the chapter.

NOTES TO DECISIONS

SUBJECT OF SEARCH

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst of rubble, and, although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (1954, 122 F. Supp. 664)

§ 25-136 [20: 1938]. Saving clause.

SEPARABILITY CLAUSE

1956—Section 602 of the act of March 31, 1956, Public Law 460, ch. 154, part of which is classified to section 25-124 provides as follows: "If any provisions of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

§ 25-138 [20: 1940]. Tax on beer.

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of \$1.50 for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the Commissioners shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 10th day of each month, furnish to the assessor of the District of Columbia, on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the 15th day of each month, pay to the collector of taxes of the District of Columbia the tax hereby imposed upon the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beer to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beer during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beer by the retail licensee, be marked "canceled" and retained by him.

(b) The Commissioners are authorized and empowered to prescribe by regulation such other meth-

ods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever, in their judgment, such action is necessary to prevent frauds or evasions.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40, as added May 16, 1938, 52 Stat. 376, ch. 223, § 8; May 27, 1949, 63 Stat. 136, ch. 146, title V, § 508; May 18, 1954, 68 Stat. 115, ch. 218, § 804; as amended, Mar. 31, 1956, 70 Stat. 83, ch. 154, § 305.)

AMENDMENTS

1956—Section 305 of the act of March 31, 1956, cited to text, amended subsection (a) by striking out \$1.25 and inserting \$1.50.

1954—The act of May 18, 1954, amended subsection (a) by striking \$1 and inserting \$1.25 effective as of May 19, 1954. See note under § 25-124 concerning transitory provisions.

Authority of commissioners to make rules and regulations relating to act of March 31, 1956, see section 47-1595a.

CROSS REFERENCE

1954—Commissioners authority to make regulations, see section 43-1618.

EFFECTIVE DATE OF AMENDMENT

1956—Section 308 of the act of March 31, 1956, cited to text, makes the amendment effective on May 1, 1956.

§ 25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

(a) Any building, ground, premises, or place where any intoxicating beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this chapter is hereby declared to be a nuisance, and may be enjoined and abated as hereinafter provided.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants, in the civil branch of The Municipal Court for the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained. The rules of The Municipal Court for the District of Columbia relating to the granting of an injunction or restraining order shall be applicable with respect to actions brought under this subsection, except that the District as complaining party shall not be required to furnish bond or security. It shall not be necessary for the court to find the building, ground, premises, or place was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the complaint are true, the court shall enter an order restraining the defendant from manufacturing, selling, keeping for sale, or permitting to be consumed any alcoholic beverage in violation of this chapter. When an injunction, either temporary or permanent, has been granted it shall be binding on the defendant throughout the District of Columbia. Upon final judgment of the court ordering such nuisance to be abated, the court may order that the

defendant, or any one claiming under him, shall not occupy or use, for a period of one year thereafter, the building, ground, premises, or place upon which the nuisance existed, but the court may, in its discretion, permit the defendant to occupy or use the said building, ground, premises, or place, if the defendant shall give bond with sufficient security to be approved by the court, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the District of Columbia, and conditioned that intoxicating beverages will not thereafter be manufactured, sold, kept for sale, or permitted to be consumed in or upon the building, grounds, premises, or place in violation of this chapter.

(c) In the case of the violation of any injunction, temporary or permanent, rendered pursuant to the provisions of this section, proceedings for punish-

ment for contempt may be commenced by the corporation counsel or any of his assistants, by filing with the court in the same case in which the injunction was issued a petition under oath setting out the alleged offense constituting the violation and serving a copy of said petition upon the defendant requiring him to appear and answer the same within ten days from the service thereof. The trial shall be promptly held and may be upon affidavits or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than twelve months, or by both such fine and imprisonment. (Jan. 24, 1934, ch. 4, § 41, as added June 29, 1953, 67 Stat. 104, ch. 159, § 404 (j).)

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chapter 1.—BANKING INSTITUTIONS IN GENERAL

§ 26-103 [5: 300]. Banking—Foreign corporations not to engage in—Approval of Controller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

* * * *

(c) No building association, incorporated or unincorporated, shall do a building-association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Home Loan Bank Board; and the Home Loan Bank Board shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, other than a foreign association which qualifies for a certificate of authority under section 26-405, where such association is not incorporated under the laws of the District of Columbia in accordance with sections 26-401 to 26-416, except that this paragraph shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

* * * *

(As amended Sept. 15, 1951, 65 Stat. 324, ch. 404, § 3.)

AMENDMENTS

1951—The act of Sept. 15, 1951, amended subsection (c) by substituting "Home Loan Bank Board" for "Comptroller of the Currency", and adding the words "other than a foreign association which qualifies for a certificate of authority under § 26-405."

Chapter 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

§ 26-201 [19: 1]. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.

NOTES TO DECISIONS

EVIDENCE

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie v. Imirie and Bogley etc.* (1957, 100 U. S. App. D. C. 371, 246 F. 2d 652).

§ 26-204 [19: 4]. Payment of trust accounts on death of trustee.

Whenever a deposit, savings account, or share account, which is in form in trust for another, shall be made or held by any person in any bank, trust company, savings and loan association, building association, building and loan association, or Federal savings and loan association, doing business in the District of Columbia, and no other or further notice

of the existence and terms of a legal and valid trust shall have been given in writing to such bank, trust company, or other association, such deposit, savings account, or share account, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit, savings account, or share account was made or held, or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4; July 19, 1954, 68 Stat. 494, ch. 545, § 1.)

AMENDMENTS

1954—The act of July 19, 1954, amended the section by adding "savings account" and "share account" and "savings and loan association, building association, building and loan association, or Federal savings and loan association".

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

§ 26-324 [5: 363]. Number of directors or trustees—Election—Tenure.

The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the bylaws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736; as amended, Aug. 28, 1957, 71 Stat. 474, Pub. L. 85-199, § 1.)

AMENDMENTS

Act of August 28, 1957, cited to text, amended the section by inserting after the word "stockholders" the phrase "and citizens of the United States"; struck the phrase "one-half residents and citizens of the District of Columbia" and inserted in lieu thereof the phrase "two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company."

Chapter 4.—BUILDING ASSOCIATIONS

Sec.

26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Home Loan Bank Board.

§ 26-404 [5: 44]. Object—Powers of Comptroller of the Currency—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members

thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the Home Loan Bank Board is authorized, whenever such Board may deem it useful; to cause examination to be made into the condition of any building association incorporated under the provisions of this title, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall be paid by such association to the Home Loan Bank Board at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of Columbia shall make to the Home Loan Bank Board at least one report during each year, according to the form which may be prescribed by such Board, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The Home Loan Bank Board shall also have power to take possession of any company or association whenever in the Board's judgment any such company or association is insolvent or is knowingly violating the laws under which it is operated and to liquidate the same in the manner provided in rules and regulations which said Board is hereby authorized to adopt, and said Board may also provide in such rules and regulations a procedure for the voluntary liquidation of any such company or association; and if any such company or association which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause shall discontinue its operations for a period of sixty days, the Home Loan Bank Board may, if such Board deems it advisable, appoint a receiver for such company or association:

Provided further, That from and after the first day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this chapter, without strict compliance in all particulars with the provisions of this chapter: *Provided*, That building associations organized and in actual operation before March 4, 1909, need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this chapter shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this chapter, or of any building or loan association located or doing business in the District of Columbia, or any money,

funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District. (As amended Sept. 15, 1951, 65 Stat. 323, ch. 404, § 1.)

AMENDMENTS

1951—The act of Sept. 15, 1951, amended the section generally by transferring functions of the Comptroller of the Currency to the Home Loan Bank Board; by striking monetary limits on the cost of examination of building associations, and by authorizing the Board to adopt rules and regulations relating to voluntary and involuntary liquidation and appointment of receivers.

§ 26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Home Loan Bank Board.

Any powers, duties, and functions of the Comptroller of the Currency with respect to building associations and building and loan associations operating in the District of Columbia which are not transferred to the Home Loan Bank Board by the specific statutory amendments herein contained are also hereby transferred from the Comptroller of the Currency to the Home Loan Bank Board. (Sept. 15, 1951, 65 Stat. 324, ch. 404, § 4.)

§ 26-405 [5: 45]. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Home Loan Bank Board a certificate of authority to do such business in said District, after complying with the following provisions:

(a) It shall deposit with the Treasurer of the United States \$50,000 in cash or bonds of the United States or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the Treasurer of the United States, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit made by a foreign association with the Treasury of the United States shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the Treasurer of the United States, upon a certificate from the Home Loan Bank Board, may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities;

(b) It shall file with the Home Loan Bank Board a certified copy of its charter, constitution, and bylaws, and other rules and regulations showing its manner of conducting business, together with

a statement such as is required semiannually from all associations;

(c) It shall file with the Home Loan Bank Board a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served. There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Home Loan Bank Board, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term "process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(d) It shall pay to the collector of taxes the following fees:

For filing an application for admission to do business in the District of Columbia, \$500;

For each certificate of authority and annual renewal thereof, \$200.

(e) When a foreign association has complied with the provisions of paragraph (c) of this section, and the Home Loan Bank Board is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, such Board may issue such Board's certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Home Loan Bank Board is satisfied as herein provided, such Board shall issue a renewal of such certificate.

(f) Should the Home Loan Bank Board find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Home Loan Bank Board may revoke the certificate of authority granted, after ninety days' notice, to such foreign association to do a building and loan business in the District of Columbia: *Provided*, That upon revocation of such certificate of authority the Home Loan Bank Board shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one daily newspaper of general circulation in the District of Colum-

bia. After so notifying said home office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(g) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever apparent: *Provided*, That the Home Loan Bank Board may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expenses of such examinations of such foreign associations shall be paid by the association examined.

(h) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any State upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said State, in excess of the taxes, fines, penalties, fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such State doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such State; and upon the failure of any association incorporated under the laws of such State to comply therewith the Home Loan Bank Board shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(i) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this chapter, or which willfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than \$25 or more than \$500, to be recovered by an action in the name of the United States and on collection paid into the Treasury of the United States. (As amended Sept. 15, 1951, 65 Stat. 323, ch. 404, § 2.)

AMENDMENTS

1951—The act of Sept. 15, 1951, amended the section by changing references to the Comptroller of the Currency to the Home Loan Bank Board and by deleting the final provision of subsection (g) which read: "if said examination is made beyond the limits of the District of Columbia, but if made within the limits of the District of Columbia, the cost of the examination to be at the same rate and upon the same terms as provided in § 26-404."

Chapter 5.—CREDIT UNIONS

Sec.

26-504. Approval of certificate—Report by Director of the Bureau of Federal Credit Unions.

26-506. Supervision by Director of the Bureau of Federal Credit Unions—License—Revocation.

§ 26-504 [5: 384]. Approval of certificate—Report by Director of the Bureau of Federal Credit Unions.

The organization certificate shall be presented to the Commissioners of the District of Columbia, who may, in their discretion, approve the certificate. The said Commissioners are authorized to refer any such proposed certificate to the Director of the Bureau of Federal Credit Unions, who shall, within a reasonable time, submit a report to the said Commissioners with respect (1) to the conformity of the certificate to the provisions of this chapter, (2) the general character and fitness of the subscribers, and (3) the advisability of establishing a credit union in the proposed field of membership. (June 23, 1932, 47 Stat. 327, ch. 272, § 4; Aug. 10, 1954, 68 Stat. 682, ch. 666, § 1.)

AMENDMENTS

1954—The act of August 10, 1954, amended the section by inserting "Director of the Bureau of Federal Credit Unions" in lieu of "Comptroller of the Currency."

§ 26-506 [5: 386]. Supervision by Director of the Bureau of Federal Credit Unions—License—Revocation.

(a) Credit unions established under this chapter shall be under the supervision of the Director of the Bureau of Federal Credit Unions. They shall make such financial reports to him (at least annually) as he may require.

(b) Not later than January 31 of each calendar year each credit union established under this chapter shall pay to the Bureau of Federal Credit Unions, for the preceding calendar year, a supervision fee in accordance with the scale prescribed for Federal credit unions. All such fees shall be deposited with the Treasurer of the United States for the account of the Bureau in the special fund created by section 5 of the Federal Credit Union Act and may be expended by the Director for such administrative and other expenses incurred in carrying out the provisions hereof as he may determine to be proper, the purpose of such fees being to defray, as far as practical, the administrative and supervisory costs of the Bureau incident to the execution of its functions under this chapter.

(c) Each credit union established under this chapter shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Director. The scale of examination fees prescribed for Federal credit unions shall also be applicable to credit unions established under this chapter which fees shall be assessed against and paid by each credit union established under this chapter promptly after the completion of such examination. Examination fees collected under the provisions of this section shall be deposited to the credit of the special fund created by section 5 of the Federal Credit Union Act, and shall be available for the purposes specified in subsection (b) of this section.

(d) It shall be unlawful for any credit union established under this chapter to transact business in the District of Columbia without procuring a license from the District of Columbia; and all such credit unions shall pay a license tax of \$5 per annum to the

District of Columbia. No license shall be granted for a longer period than one year: *Provided*, That the Commissioners of the District of Columbia may suspend or revoke a license upon proof of the bankruptcy or insolvency of any such credit union or upon conviction of a violation of any provision of this chapter or any law or regulation of the District of Columbia or of the United States. (June 23, 1932, 47 Stat. 327, ch. 272, § 6; Aug. 10, 1954, 68 Stat. 682, ch. 666, § 2.)

AMENDMENTS

1954—The act of August 10, 1954, amended the section by substituting the present language for previous provisions so that the credit unions are now under the supervision of the Director of the Bureau of Federal Credit Unions. It was also provided that the license fee would be \$5 per year rather than the previous \$15.

§ 26-507 [5: 387]. Powers.

A credit union shall have succession in its corporate name during its existence and shall have power—

First. To make contracts.

Second. To sue and be sued in its corporate name.

Third. To adopt and use a common seal and alter the same at pleasure.

Fourth. To purchase, hold, and dispose of property necessary to enable the corporation to carry on its operations.

Fifth. To make loans to its members for provident purposes upon such terms and conditions as the by-laws provide and as the credit committee may approve at rates of interest not exceeding 1 per centum per month on unpaid balances, inclusive of all charges incident to the making of the loan: *Provided*, That no loan to a director, officer, or member of a committee shall exceed the amount of his holdings in the credit union in shares nor shall any such director, officer, or member indorse for borrowers. A borrower may prior to maturity repay his loan in whole or in part on any business day.

Sixth. To receive of its members payment on shares.

Seventh. To invest in the paid-up shares of building and loan associations and of other credit unions to an extent not to exceed 25 per centum of its capital, and in any investment legal for savings banks or for trust funds in the District of Columbia.

Eighth. To make deposits in banks and trust companies in the District of Columbia under the supervision of the Comptroller of the Currency.

Ninth. To borrow in an aggregate outstanding amount not exceeding 40 per centum of its paid-in and unimpaired capital.

Tenth. To fine members for failure to meet promptly their obligations to such corporation.

Eleventh. To impress a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or fines payable by him. (June 23, 1932, 47 Stat. 328, ch. 272, § 7; July 31, 1953, 67 Stat. 260, ch. 297, § 1.)

AMENDMENTS

1953—Act of July 31, 1953, amended the section by inserting the words "credit union" in lieu of "company" in paragraph 5, and by inserting the words "payable by" in lieu of "payable to" in paragraph 11.

§ 26-509 [5: 389]. Membership.

Credit-union membership shall consist of the incorporators and such other persons or organizations as may be elected to membership and subscribe to at least one share, pay the initial installment thereon, and the entrance fee, if any; except that credit-union membership shall be limited to groups the members of which are actual residents of or do business or are employed within the District of Columbia, and either have a common bond of occupation, of association, or reside within a well-defined neighborhood or community. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member. (June 23, 1932, 47 Stat. 329, ch. 272, § 9; July 31, 1953, 67 Stat. 260, ch. 297, § 2.)

AMENDMENTS

1953—Act of July 31, 1953, amended the section by striking the provision which limited the number of shares which could be held by an individual to two hundred shares. The act also added the last sentence relating to shares issued in joint tenancy.

§ 26-512 [5: 390b]. Reserves.

All entrance fees and fines provided by the bylaws and 20 per centum of the net earnings of each year, before the declaration of any dividends, shall be set aside as a reserve fund against bad loans or other losses, which fund shall not be distributed except in case of liquidation: *Provided, however*, That when the reserve fund thus established shall equal 10 per centum of the total amount of members' shareholdings, no further transfer of net earnings to such reserve fund shall be required except that such amounts not in excess of 20 per centum of the net earnings as may be needed to maintain this 10 per centum ratio shall be transferred. In addition to such regular reserve, special reserves to protect the interests of members shall be established when required (a) by regulation, or (b) in any special case, when found by the Director of the Bureau of Federal Credit Unions to be necessary for that purpose. (June 23, 1932, 47 Stat. 330, ch. 272, § 12; July 31, 1953, 67 Stat. 260, ch. 297, § 3; Aug. 10, 1954, 68 Stat. 683, ch. 666, § 3.)

AMENDMENTS

1954—The act of August 10, 1954, substituted "Director of the Bureau of Federal Credit Unions" for "Comptroller of the Currency".

1953—Act of July 31, 1953, amended the section by providing that after the reserve fund shall equal 10 percent of members' shareholdings no further transfers of net earnings to that fund will be required. The amendment also eliminated the requirement that the reserve fund be kept "liquid and intact". In addition, special reserves were provided for.

Chapter 6.—MONEY LENDERS—LICENSES

§ 26-601 [17: 21]. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

CROSS REFERENCE

1956—The act of August 6, 1956, 70 Stat. 1036, ch. 970, sections 1-18 and sections 20 and 21, to regulate and li-

cense pawnbrokers in the District of Columbia are classified to sections 2-2001 to 2-2019.

PARTIAL REPEAL

1956—Section 19 of the act of August 6, 1956, 70 Stat. 1043, ch. 970 (sections 1-18 and 20-21, of said act are classified to title 2, ch. 20) provides as follows: The Act entitled "An Act to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real-estate brokers, in the District of Columbia", approved February 4, 1913, as amended [§§ 26-601 to 26-611] insofar as the same applies to the business of lending money on the security of the pledge and possession of tangible personal property, is hereby repealed.

NOTES TO DECISIONS

ACTION AT LAW APPROPRIATE REMEDY

An action at law for damages for wrongful foreclosure is an especially appropriate remedy where an innocent purchaser buys at foreclosure, because it gives relief against guilty rather than innocent party. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

BORROWER'S RIGHTS UNDER USURIOUS CONTRACT

A borrower who enters into a usurious contract, void because lender violated Loan Shark Law for not having license, may recover from lender any damages sustained by reason of such void contract. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

BORROWER MEMBER OF A CLASS

A borrower is member of class for whose protection statute, requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, was enacted. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

CONSTRUCTION

In suit by conditional buyer of automobile against seller and finance company, to which conditional sale agreement and note covering deferred purchase price were negotiated, to have agreement and note declared void and to recover money paid under agreement, evidence sustained finding that the transaction was a sale and not a loan of money, and that therefore the sanctions of the Loan Shark Law did not apply. *Brooks v. Auto Wholesalers* (D. C. Mun. App. 1953, 101 A. 2d 255).

ELECTION OF REMEDIES

Borrower under usurious loan contract made in violation of statute requiring license of lender had right to elect whether to go into equity and ask that foreclosure sale, caused by transferee of void note and deed of trust, be set aside, or to let sale stand and ask for damages. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

EVIDENCE

In action to recover for wrongful foreclosure of deed of trust, evidence was admissible to show that lender was doing business in violation of Loan Shark Law making it unlawful for person to engage in business of loaning money at interest rate greater than 6% per annum without procuring license. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

Where it was established that lending agency in two instances violated statutes making it unlawful to "engage in business" of loaning money at rate greater than 6 percent per annum on any security without procuring a license, there was sufficient showing that agency did "engage in business" within meaning of statute. *Columbia Auto Loan v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 857).

ILLEGAL CONTRACTS

Illegality of contract may be used only as defense; and, therefore, even if deed of trust was illegal, for failure

of lender to have license required of persons engaged in business of loaning money at interest rate greater than six percent per annum, borrower could not recover for damage allegedly sustained by reason of wrongful foreclosure of deed of trust. *M. W. Royall v. L. Yudelevit et al.* (1958, 161 F. Supp. 217).

Where no legal insurance was obtained on automobile by lending agency when contract was executed under which charge was exacted which made the total more than 6 percent annually on amount loaned, even though part of the charge was called an "insurance premium", the charge was for "interest", and lending agency violated statute making it unlawful to engage in business of loaning money at rate greater than 6 percent per annum on any security without procuring a license. *Columbia Auto Loan Inc. v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 857).

LIABILITY OF LENDER

Where lender, not licensed as required by Loan Shark Law, grants usurious loan, and makes foreclosure possible by transfer of void note and deed of trust, lender is liable in damages resulting from foreclosure by his transferee, even if transferee was innocent throughout. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

LIABILITY OF TRANSFEE

Where one takes note and deed of trust with notice or knowledge that transferor had obtained them through usurious loan contract made in violation of Loan Shark Law requiring license of lender, a foreclosure thereunder by such person is unlawful and he is liable for damages caused thereby. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

PARI DELICTO

Under Loan Shark Law requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, borrower is not in pari delicto with lender and his participation with him in making loan does not bar borrower from asserting illegality of loan. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577)

UNLICENSED LENDER

A lender in a loan contract which is merely usurious may not be liable in damages, but if there is added the fact that the lender was not licensed as required by law loan contract is unlawful and void, and a foreclosure thereunder is wrongful and gives rise to action for damages suffered therefrom. *M. W. Royall v. L. Yudelevit and W. H. Simons* (1959, — U.S. App. D.C. —, 268 F. 2d 577).

TITLE 27.—CEMETERIES AND CREMATORIES

Chapter 1.—CEMETERY ASSOCIATIONS — REGULATORY PROVISIONS

Sec. 27-114a. Commissioners authorized to license certain lands for cemetery purposes.

§ 27-114a. Commissioners authorized to license certain lands for cemetery purposes.

Without regard to the provisions of section 27-114, the Commissioners of the District of Columbia are hereby authorized to license for cemetery purposes any parcel of land in the District of Columbia which does not exceed one acre in size, and which, except for a one-side frontage of less than 100 feet on a public street or highway, is otherwise completely bounded by land dedicated to cemetery purposes. (July 14, 1956, 70 Stat. 538, ch. 594, § 1.)

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chapter 1.—NEGOTIABLE INSTRUMENTS— FORM AND INTERPRETATION

§ 28-102 [22: 2]. Negotiability—Requirements—Form.

NOTES TO DECISIONS

COMPLETE AND REGULAR

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

EVIDENCE

In action by endorsee of promissory note against makers, evidence sustained finding that endorsee was holder in due course, notwithstanding claim that note was not complete and regular on its face based on fact that place of payment was not specified in space provided therefor and that it appeared that blanks in printed form had been filled in by different persons using different colored inks. *F. M. Manzon et ano. v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A 2d 575).

PLACE OF PAYMENT

With respect to negotiability, place of payment is not a material element. *F. M. Manzon et ano. v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

STOLEN TRAVELER'S CHECKS

Attempt of buyer of traveler's checks who had countersigned same to countermand checks which had been stolen and placed in circulation was ineffectual as to holders in due course. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

§ 28-107 [22: 7]. Validity and negotiability—Effect of omissions—Seal—Particular money.

NOTES TO DECISIONS

SEAL

The validity and negotiability of a note are not affected by fact that it bears a seal. *L. M. Sigler v. Mt. Vernon Bottling Co.* (1958, 158 F. Supp. 234).

§ 28-109 [22: 9]. Instrument payable to order.

NOTES TO DECISIONS

INDORSEMENT IN BLANK

Traveler's checks, agreed by buyer to be negotiated only by countersigning in presence of payee, became fully negotiable within meaning of uniform negotiable instruments law when countersigned, even though signed out of presence of payee, and in absence of showing of fraud or deceit on part of seller, seller was bound to honor them when presented by holder in due course, notwithstanding fact that they had been stolen from buyer. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

NECESSARY REQUISITES

A person designated as payee of a note, having fulfilled the necessary requisites, may be a holder in due course. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

STOLEN TRAVELER'S CHECKS

Attempt of buyer of traveler's checks who had countersigned same to countermand checks which had been

stolen and placed in circulation was ineffectual as to holders in due course. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

§ 28-110 [22: 10]. Instrument payable to bearer.

NOTES TO DECISIONS

DEFENSES

In action to recover amount paid out by defendant bank on checks drawn by plaintiff on his account to a corporation on ground that endorsements of checks were not those of the intended payee, defenses of estoppel, negligence and plaintiff's laches would have to be pleaded and proved by defendant bank. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 90 U. S. App. D. C. 228, 195 F. 2d 556).

METHOD OF NEGOTIATION

The provision of Negotiable Instruments Law that instrument payable to bearer is negotiated by delivery and that instrument payable to order is negotiated by indorsement of holder, completed by delivery, was not intended to define exclusive method of negotiation. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

NONEXISTENT PAYEE

Where, at time checks were drawn by plaintiff on his account to a certain corporation, organization of Illinois corporation had proceeded to a point where, by Illinois law, its corporate existence was beyond challenge except by state, checks were not drawn to nonexistent payee and consequently payable to bearer under Negotiable Instruments Law and two other checks previously drawn by plaintiff were not within fictitious payee rule because nonexistence of corporation was not known to plaintiff. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 90 U. S. App. D. C. 228, 195 F. 2d 556).

Where plaintiff conceded that at time he drew first check on his account in defendant bank payable to a certain corporation he knew there was no corporation by that name, check was bearer paper and as to that check plaintiff, under his pleadings, was entitled to no recovery against the defendant bank for its honoring endorsement of the nonexistent corporation. *Id.*

§ 28-111 [22: 11]. Terms—Sufficiency.

NOTES TO DECISIONS

COMPLETE AND REGULAR

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

TRAVELER'S CHECKS

Traveler's checks, agreed by buyer to be negotiated only by countersigning in presence of payee, became fully negotiable within meaning of uniform negotiable instruments law when countersigned, even though signed out of presence of payee, and in absence of showing of fraud or deceit on part of seller, seller was bound to honor them when presented by holder in due course, notwithstanding fact that they had been stolen from buyer. *Emerson v. American Exp. Co.* (D.C. Mun. App. 1952, 90 A. 2d 236).

§ 28-116 [22: 16]. Undelivered in complete instrument—Validity.

NOTES TO DECISIONS

LIABILITY OF MAKER

Where thief stole properly signed check, typed in as payee his own name, endorsed check and had it cashed at drawee bank, depositor rather than bank would have to bear loss. *The Concordia Lutheran Evangelical Church v. The United States Casualty Co. et al.* (D. C. Mun. App. 1955, 115 A. 2d 307).

§ 28-117 [22: 17]. Delivery — When effectual — When presumed.

NOTES TO DECISIONS

JURY INSTRUCTIONS

In action on note which was signed by homeowner and which was made payable to savings and loan association which received note from roofer who induced homeowner to apply to association for a Federal Housing Authority guaranteed property-improvement loan which was paid to roofer, the giving of instruction that association could not be a holder in due course was reversible error. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

§ 28-119 [22: 19]. Liability—Person not signing—Person signing in trade or assumed name.

NOTES TO DECISIONS

AGREEMENT TO PAY

Where vendor paid for heating plant in house with note, guaranteed by F. H. A., and sold house to purchaser, who promised to assume liability for heating plant cost, purchaser could set up defense of vendor's fraudulent misrepresentation of condition of heating plant against action by United States, which had taken assignment of note, to collect balance due. *Rouse v. United States* (1954, 94 U. S. App. D. C. 386, 215 F. 2d 872).

Person who did not sign note was not liable thereon. *Id.*

REAL PARTIES IN INTEREST

Where note which was executed as part of purchase price of realty and which was secured by deed of trust thereon bore only the signature of maker with no indication that she executed it in other than her individual capacity, her employers were not liable for deficiency on foreclosure by exercise of power of sale, on any theory that employers were real parties in interest and that maker executed the papers for employers as their agent. *Stearns et al. v. Formant et al., etc.* (1957, 102 U. S. App. D. C. 12, 249 F. 2d 527).

§ 28-120 [22: 20]. Signature by agent—Authority.

NOTES TO DECISIONS

REAL PARTIES IN INTEREST

Where note which was executed as part of purchase price of realty and which was secured by deed of trust thereon bore only the signature of maker with no indication that she executed it in other than her individual capacity, her employers were not liable for deficiency on foreclosure by exercise of power of sale, on any theory that employers were real parties in interest and that maker executed the papers for employers as their agent. *Stearns et al. v. Formant et al., etc.* (1957, 102 U. S. App. D. C. 12, 249 F. 2d 527).

§ 28-124 [22: 24]. Signature forged or without authority.

NOTES TO DECISIONS

DEFENSES

In action to recover amount paid out by defendant bank on checks drawn by plaintiff on his account to a corporation on ground that endorsements of checks were not those of the intended payee, defenses of estoppel, negligence and plaintiff's laches would have to be pleaded and proved by defendant bank. *Callaway v. Hamilton*

Nat. Bank of Washington (1952, 90 U. S. App. D. C. 228, 195 F. 2d 556).

FORGERY AS A DEFENSE

Under statute providing that a person acquiring an instrument under forced endorsement cannot enforce it against any party thereto unless such party is "precluded" from setting up forgery as a defense, negligence is considered a basis to "preclude" the party from setting up the forgery but it must be such negligence as directly and proximately affects the conduct of the party in passing the forged instrument and must contribute to and induce the acceptance of the check under the forged endorsement, and it must be negligence lulling the party paying on the forged endorsement, into relaxing its vigilance against forgeries. *B. F. Saul Co. v. Rich Wine and Liquor Co.* (D. C. Mun. App. 1956, 120 A. 2d 208).

Entrusting checks to a trusted employee is not such negligence as will "preclude" the drawer within the statute providing that a person acquiring an instrument under a forged endorsement cannot enforce its payment against any party thereto unless such party is "precluded" from setting up the forgery. *Id.*

In action to recover loss sustained by plaintiff in cashing checks bearing endorsements forged by defendant's employee, where there was no showing that plaintiff relied or even knew of defendant's practice of delivering checks to the employee or that it was aware that under the defendant's accounting practices, it was possible for the employee to fraudulently requisition checks, plaintiff's cashing of the checks without investigation was at its peril and it was required to bear the loss sustained thereby. *Id.*

The rule that as between two innocent persons, one whose conduct placed it in the power of a third party to occasion the loss must suffer, is properly applied as respects responsibility for loss occasioned by the cashing of checks forged by the drawer's employee only when a check is issued and made payable to an imposter. *Id.*

Chapter 2.—CONSIDERATION

§ 28-201 [22: 31]. Presumption of valuable consideration.

NOTES TO DECISIONS

DEFENSES

If defendant in suit on promissory note was accommodation maker, and plaintiff was not holder for value, defendant would have sufficient defense against suit. *Brice v. Herrmann* (D. C. Mun. App. 1957, 128 A. 2d 790).

§ 28-202 [22: 32]. What is value.

NOTES TO DECISIONS

CONSIDERATION

An extension of time and forbearance to sue on old notes would constitute sufficient consideration for renewal note. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

RENEWAL NOTE

If there was an agreement between parties to cancel prior notes upon execution of renewal note, payee must produce prior notes before it could recover on renewal note. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

SUMMARY JUDGMENT

In action against accommodation endorser who claimed that there was no consideration for renewal note, and payee contended that consideration was an extension of time and forbearance to sue on the old notes, that there was no agreement to discharge the old notes and that even if there was such agreement payee was not required to do so before coming into court, there were material issues of fact involved precluding grant of summary judgment on ground of lack of consideration, since whether payee's acceptance of renewal note put payee under duty to cancel original notes depended on whether payee agreed to do so, and intent of parties determined

whether such agreement existed, and that in turn was a question of fact. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

§ 28-203 [22: 33]. Who is holder for value.

NOTES TO DECISIONS

CONSIDERATION

An extension of time and forbearance to sue on old notes would constitute sufficient consideration for renewal note. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

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§ 28-204. Holder of lien on instrument is holder for value.

NOTES TO DECISIONS

HOLDER OF PART OF PRINCIPAL

Under the statute, one may be holder for value and a holder in due course of only a part of the principal amount of a note. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

PURCHASE OF NOTE AT AUCTION

Where plaintiff executed note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant's status as a holder in due course when taking a note as collateral was not lost when he bought the note at auction sale when note was past due. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

§ 28-205 [22: 35]. Absence or failure of consideration is defense.

NOTES TO DECISIONS

FAILURE OF CONSIDERATION

Where payee of a note fails to furnish promised main or chief consideration therefor, maker should be relieved from paying note sued on. *Pappas v. Courembis* (D. C. Mun. App. 1951, 82 A. 2d 757).

PARTIAL FAILURE OF CONSIDERATION

Because there is a partial failure of consideration sufficient to defeat recovery on one or more notes, it does not necessarily follow that there is sufficient failure of consideration to defeat recovery on an additional note given in same transaction. *Pappas v. Courembis* (D. C. Mun. App. 1951, 82 A. 2d 757).

RES JUDICATA

Where defendant delivered five promissory notes in connection with sale of a business, and in a suit on two of notes defendant raised defense of partial failure of consideration, and judgment was entered thereon, judgment on the two notes was not res judicata to another suit on third note where same defense of partial failure

of consideration was interposed, since partial failure of consideration on two of notes did not necessarily mean that there was a failure of consideration on third note, even though it was given as part of same transaction. *Pappas v. Courembis* (D.C. Mun. App. 1951, 82 A. 2d 757).

§ 28-206 [22: 36]. "Accommodation parties" defined—Liability.

NOTES TO DECISIONS

CONSIDERATION

An extension of time and forbearance to sue on old notes would constitute sufficient consideration for renewal note. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

DEFENSES

If a defendant in suit on promissory note was accommodation maker, and plaintiff was not holder for value, defendant would have sufficient defense against suit. *Brice v. Herrmann* (D. C. Mun. App. 1957, 128 A. 2d 790).

HOLDER FOR VALUE

A holder for value of promissory note may recover against accommodation maker, though at time of taking instrument he knew it to be such paper. *Brice v. Herrmann* (D. C. Mun. App. 1957, 128 A. 2d 790).

QUESTIONS OF FACT

In action for face value of checks given to defendant's employer by defendant and cashed by plaintiff pursuant to plan whereby defendant and defendant's employer would exchange checks, and defendant's employer would cash defendant's check and deposit proceeds in bank to make good check of defendant's employer when presented for payment, which action was brought after check was returned by defendant's bank for insufficiency of funds, whether plaintiff had cashed check under circumstances making plaintiff holder in due course within Negotiable Instrument Act was for jury under evidence. *Bollt v. Morgenstein* (D. C. Mun. App. 1951, 81 A. 2d 656).

RENEWAL NOTE

If there was an agreement between parties to cancel prior notes upon execution of renewal note, payee must produce prior notes before it could recover on renewal note. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

SUMMARY JUDGMENT

In action against accommodation endorser who claimed that there was no consideration for renewal note, and payee contended that consideration was an extension of time and forbearance to sue on the old notes, that there was no agreement to discharge the old notes and that even if there was such agreement payee was not required to do so before coming into court, there were material issues of fact involved precluding grant of summary judgment on ground of lack of consideration, since whether payee's acceptance of renewal note put payee under duty to cancel original notes depended on whether payee agreed to do so, and intent of parties determined whether such agreement existed, and that in turn was a question of fact. *The Purcellville National Bank v. W. C. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

Chapter 3.—NEGOTIATION

§ 28-301 [22: 41]. Definition—Bearer instrument—Order instrument.

NOTES TO DECISIONS

JURY INSTRUCTIONS

In action on note which was signed by homeowner and which was made payable to savings and loan association which received note from roofer who induced homeowner to apply to association for a Federal Housing Authority guaranteed property-improvement loan which was paid to roofer, the giving of instruction that association could not be a holder in due course was reversible error. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

METHOD OF NEGOTIATION

The provision of Negotiable Instruments Law that instrument payable to bearer is negotiated by delivery and that instrument payable to order is negotiated by indorsement of holder, completed by delivery, was not intended to define exclusive method of negotiation. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

§ 28-302 [22: 42]. Indorsement—How made—Sufficiency.

NOTES TO DECISIONS

ORDER OF ENDORSEMENTS

Endorsements on promissory notes are required to be written on the instrument itself or paper attached thereto but there is no requirement that the endorsements be written in any particular order, especially where the true sequence is clearly indicated by the endorsements themselves. *F. M. Manzon et ano. v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

§ 28-320. Transfer without indorsing—Time of taking effect.

NOTES TO DECISIONS

CONDITIONAL SALE NOTE

Concurrent execution of note and conditional sale agreement or similar instrument does not affect characteristics of note which give it commercial value, whether agreement is attached to note or on separate piece of paper.

Mere fact that note on its face referred to conditional sale contract giving rise to its execution did not render it nonnegotiable. *Certified Motors, Inc. v. Nolan Loan Co., Inc., etc.* (D. C. Mun. App. 1956, 122 A. 2d 337).

ENDORSEMENT

Code section entitling transferee to endorsement applies only to negotiable instruments. *Certified Motors, Inc. v. Nolan Loan Co., Inc., etc.* (D. C. Mun. App. 1956, 122 A. 2d 227).

Chapter 4.—RIGHTS OF HOLDER

§ 28-402 [22: 72]. "Holder in due course" defined.

NOTES TO DECISIONS

BONA FIDE HOLDER

A bona fide holder of a negotiable instrument for a valuable consideration without notice of facts which impeach its validity between antecedent parties if he takes it under an endorsement made before same becomes due, holds title unaffected by such facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

Where plaintiff executed note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, the defendant when he acquired his lien on the plaintiff's note through the contract with the holder, was deemed to have then become a holder for value. *Id.*

COMPLETE AND REGULAR

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

DEFENSES

Although note given for purchase of \$362.50 television set was purchased for \$246.50 on day of sale of television set to maker and purchaser of note had furnished television firm with blank conditional sales contracts, purchaser of note was a holder in due course and took note

free from defense that maker had returned television set to television firm as unsatisfactory. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

DIFFERENCES IN HANDWRITING

Mere fact that there are differences in handwriting or ink does not establish irregularity in note as a matter of law, but such things constitute factors for consideration by the trier of facts. *F. M. Manzon et ano. v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

EVIDENCE

In action by endorsee of promissory note against makers, evidence sustained finding that endorsee was holder in due course, notwithstanding claim that note was not complete and regular on its face based on fact that place of payment was not specified in space provided therefor and that it appeared that blanks in printed form had been filled in by different persons using different colored inks. *F. M. Manzon et ano. v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

EVIDENCE, SUFFICIENCY

Breach of faith or such circumstances as amount to fraud or knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, but an endorsee's bad faith or fraud in acquiring a negotiable note can never be assumed and must be shown by clear and unequivocal testimony and mere suspicion is insufficient to upset proof offered by plaintiff that he is a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

FINANCE COMPANY

Although note given for purchase of \$362.50 television set was purchased for \$246.50 on day of sale of television set to maker and purchaser of note had furnished television firm with blank conditional sales contracts, purchaser of note was a holder in due course and took note free from defense that maker had returned television set to television firm as unsatisfactory. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

INSTALLMENT NOTE

Where first installment on note was due December 1, and note provided that on failure of maker to pay any installment, all installments would automatically mature, and maker failed to pay first installment by December 1, note matured as of December 1, and therefore one, to whom note was negotiated on December 13, was not a "holder in due course" and took note subject to any defense, which maker had against payees. *Hier v. Federal Glass Co., Inc.* (D. C. Mun. App. 1954, 102 A. 2d 840).

JURY INSTRUCTIONS

In action on note which was signed by homeowner and which was made payable to savings and loan association which received note from roofer who induced homeowner to apply to association for a Federal Housing Authority guaranteed property-improvement loan which was paid to roofer, the giving of instruction that association could not be a holder in due course was reversible error. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

NECESSARY REQUISITES

A person designated as payee of a note, having fulfilled the necessary requisites, may be a holder in due course. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

QUESTION FOR JURY

In action for face value checks given to defendant's employer by defendant and cashed by plaintiff pursuant to plan whereby defendant and defendant's employer would exchange checks, and defendant's employer would cash defendant's check and deposit proceeds in bank to make good check of defendant's employer when presented for payment, which action was brought after check was returned by defendant's bank for insufficiency of funds, whether plaintiff had cashed check under circumstances making plaintiff holder in due course within Negotiable

Instrument Act was for jury under evidence. *Bollt v. Morgenstein* (D. C. Mun. App. 1951, 81 A. 2d 656).

QUESTIONS OF FACT

In action for face value of checks given to defendant's employer by defendant and cashed by plaintiff pursuant to plan whereby defendant and defendant's employer would exchange checks, and defendant's employer would cash defendant's check and deposit proceeds in bank to make good check of defendant's employer when presented for payment, which action was brought after check was returned by defendant's bank for insufficiency of funds, whether plaintiff had cashed check under circumstances making plaintiff holder in due course within Negotiable Instrument Act was for jury under evidence. *Bollt v. Morgenstein* (D. C. Mun. App. 1951, 81 A. 2d 656).

SECURITY OF NEGOTIABLE INSTRUMENTS

The law regards the security of negotiable instruments in hands of holders who take for value before maturity without notice of infirmities, as of far greater importance than the preservation of defenses of those who executed them. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

§ 28-405. Defective title—Definition.

NOTES TO DECISIONS

DUTY OF HOLDER IN DUE COURSE

Where plaintiff executed a note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant was under no duty to make suggested inquiries of holder unless he acted in bad faith in not making them. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

§ 28-406. Notice of infirmity—Sufficiency.

NOTES TO DECISIONS

DUTY OF HOLDER IN DUE COURSE

Where plaintiff executed a note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant was under no duty to make suggested inquiries of holder unless he acted in bad faith in not making them. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

§ 28-407 [22: 77]. Rights of holder in due course.

NOTES TO DECISIONS

BONA FIDE HOLDER

A bona fide holder of a negotiable instrument for a valuable consideration without notice of facts which impeach its validity between antecedent parties if he takes it under an endorsement made before same becomes due, holds title unaffected by such facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

Where plaintiff executed note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, the defendant when he acquired his lien on the plaintiff's note through the contract with the holder, was deemed to have then become a holder for value. *Id.*

COMPLETE AND REGULAR

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

HOLDER WITHOUT NOTICE OF DEFECTS

Traveler's checks, agreed by buyer to be negotiated only by countersigning in presence of payee, became fully negotiable within meaning of uniform negotiable instruments law when countersigned, even though signed out of presence of payee, and in absence of showing of fraud or deceit on part of seller, seller was bound to honor them when presented by holder in due course, notwithstanding fact that they had been stolen from buyer. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

SECURITY OF NEGOTIABLE INSTRUMENTS

The law regards the security of negotiable instruments in hands of holders who take for value before maturity without notice of infirmities, as of far greater importance than the preservation of defenses of those who executed them. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

§ 28-408 [22: 78]. Rights of holder other than holder in due course.

NOTES TO DECISIONS

HOLDER AFTER MATURITY

Where first installment on note was due December 1, and note provided that on failure of maker to pay any installment, all installments would automatically mature, and maker failed to pay first installment by December 1, note matured as of December 1, and therefore one, to whom note was negotiated on December 13, was not a "holder in due course" and took note subject to any defense, which maker had against payees. *Hier v. Federal Glass Co., Inc.* (D. C. Mun. App. 1954, 102 A. 2d 840).

§ 28-409 [22: 79]. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.

NOTES TO DECISIONS

BURDEN OF PROOF

Every holder of a negotiable instrument is deemed prima facie a holder in due course and if party makes showing of any defect in endorsements, endorsee is required to prove his status as a holder in due course. *F. M. Manzon v. W. R. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

Where endorsee brought action on promissory note and makers did not show defect in any of the endorsements, it was not necessary for endorsee, in order to recover, to introduce proof of validity of endorsements. *Id.*

Every holder of negotiable instrument is deemed prima facie a holder in due course, but where it is shown that title of any person who had negotiated the instrument was defective, burden is on holder to prove that he or some person under whom he claims acquired title as a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

In suits on defendant's notes, acquired by plaintiff from payee, instructions to jury that holder of negotiable instrument is deemed prima facie to be holder in due course, but has burden of proving that he or some person under whom he claims acquired title as such holder, if title of any person who negotiated instrument is shown to have been defective, that infirmity in instrument cannot be assumed, but must be clearly shown to upset plaintiff's proof that he is holder in due course, and that title to notes was defective, if payee obtained them by fraud, but that ultimate purchaser could still recover thereon, unless he had actual knowledge of defect or of such facts that his taking of notes amounted to bad faith, correctly explained burden of proof. *Bowles v. Marsh* (D. C. Mun. App. 1951, 82 A. 2d 135).

DEFENSES

Although note given for purchase of \$362.50 television set was purchased for \$246.50 on day of sale of television set to maker and purchaser of note had furnished television firm with blank conditional sales contracts, pur-

chaser of note was a holder in due course and took note free from defense that maker had returned television set to television firm as unsatisfactory. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

DUTY OF HOLDER IN DUE COURSE

Where plaintiff executed a note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant was under no duty to make suggested inquiries of holder unless he acted in bad faith in not making them. *William R. Tucker et ano. v. Maurice M. Meredith* (1956, 98 U. S. App. D. C. 90, 232 F. 2d 347).

EVIDENCE, SUFFICIENCY

Breach of faith or such circumstances as amount to fraud or knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, but an endorsee's bad faith or fraud in acquiring a negotiable note can never be assumed and must be shown by clear and unequivocal testimony and mere suspicion is insufficient to upset proof offered by plaintiff that he is a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

SUMMARY JUDGMENT

Unless circumstances prove to be such that reasonable men could draw only one inference from them, question whether a person is a holder in due course of a note is for the trier of facts. *K. White et ano. v. H. E. Lubber* (D.C. Mun. App. 1958, 144 A. 2d 774)

Chapter 5.—LIABILITIES OF PARTIES

§ 28-502 [22: 91]. Liability of drawer.

NOTES TO DECISIONS

BEARER PAPER

A drawer's intent that payee he names shall have no interest in check makes check payable to bearer although drawer knows payee to be an existing person. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 90 U. S. App. D. C. 228, 195 F. 2d 556).

Where plaintiff conceded that at time he drew first check on his account in defendant bank payable to a certain corporation he knew there was no corporation by that name, check was bearer paper and as to that check plaintiff, under his pleadings, was entitled to no recovery against the defendant bank for its honoring endorsement of the nonexistent corporation. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 90 U. S. App. D. C. 228, 195 F. 2d 556).

Chapter 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS

§ 28-801 [22: 181]. Means of discharge of negotiable instrument.

NOTES TO DECISIONS

ORAL DISCHARGE

A promise of marriage is a valuable consideration for the discharge of a note and need not be in writing. *Pryor v. Bond* (D. C. Mun. App. 1954, 110 A. 2d 539).

In administrator's action against maker of note, evidence supported finding that note was cancelled in consideration of makers promise of marriage, even though note remained in payee's possession. *Id.*

Chapter 11.—UNIFORM SALES ACT—FORMATION OF CONTRACT

FORMALITIES OF THE CONTRACT

§ 28-1101 [11: 61]. Contract to sell—Sale—Definition—Absolute or conditional—Parties.

NOTES TO DECISIONS

NECESSITY OF OBJECTION

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for

new trial. *Ford v. Spivey et al.* (D. C. Mun. App. 1951, 79 A. 2d 565).

SALE VERSUS CONSIGNMENT

In action for treble damages under Robinson-Patman Act based on alleged book sales to plaintiff's competitors at preferential prices and terms, refusal of plaintiff's requested instruction on distinction between consignment and sale was not error, in view of instruction given on question whether transactions were consignments or sales. *Student Book Co. v. Washington Law Book Co.* (1956, 98 U.S. App. D.C. 49, 232 F. 2d 49; certiorari denied 76 S. Ct. 474).

§ 28-1104 [11: 64]. Statute of frauds.

NOTES TO DECISIONS

NECESSITY OF OBJECTION

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for new trial. *Ford v. Spivey et al.* (D. C. Mun. App. 1951, 79 A. 2d 565).

§ 28-1112 [11: 72]. Express warranty—Definition.

NOTES TO DECISIONS

EVIDENCE

In action to recover down payment on automobile for breach of a warranty that automobile was in good condition, evidence relating to repairs necessary immediately after purchase was sufficient to sustain judgment for buyer. *Moore-Day Motors, Inc. v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

REMEDY

Where buyer purchased automobile and paid a down payment upon an express warranty by seller that automobile was in good condition, but automobile would not start the day after it was purchased and required \$50 repairs, the remedy of rescission was open to the buyer even though rescission was made after the sending of the repair bill. *Moore-Day Motors, Inc. v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

STATEMENTS OF SALESMEN

In action for rescission of sale of hearing aid, trial court's conclusion that statements of seller's salesman that instrument was of sufficient power for buyer's hearing deficiency, and best help she could get, were an express warranty, was correct. *Anthony W. Hagedorn etc. v. Virginia Taggart* (D. C. Mun. App. 1955, 114 A. 2d 430).

In action for rescission of contract of sale of hearing aid, evidence was sufficient to support finding of breach of warranty that hearing aid was sufficient to correct buyer's hearing deficiency. *Id.*

Whether statements made by dealers is mere "puffing" or a warranty depends upon the surrounding circumstance, the manner in which they are made, and the ordinary effect of the words used. *Moore-Day Motors, Inc., v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

CONDITIONS AND WARRANTIES

§ 28-1115 [11: 75]. Implied warranties of equality or fitness—Effect of express warranty.

NOTES TO DECISIONS

ALTERED GOODS

In action by retailer of a smock to compel manufacturer to satisfy judgment obtained against the retailer by purchaser of a smock which ignited and burst into flames, in addition to proof that the smock sold to the buyer was purchased from the defendant the retailer must demonstrate that there was no change or alteration in the condition of the smock between the date of the purchase and the date of the subsequent sale to the buyer. *Frank R. Jelleff, Inc., etc. v. Pollak Bros. Inc.* (1957, 171 F. Supp. 467)

CIRCUMSTANCES OF SALE

An "implied warranty" that goods sold are reasonably fit for the purpose of the purchaser is never in writing,

is not created by a meeting of the minds of the parties, and does not constitute any portion of the contractual elements of the agreement, but is a product of the law operating upon the circumstances of the sale. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

EVIDENCE, ADMISSIBILITY

Purchase order signed by both parties to sale of hearing aid, which contained statement that buyer had examined hearing aid and that there was no understanding, verbal or written, which would modify or amend effect of order, did not operate as a bar to introduction and consideration of evidence establishing an implied warranty that hearing aid was suitable for buyer's needs, since buyer had informed seller of the particular purpose for which the hearing aid was needed, and had relied upon the skill and judgment of seller in prescribing and furnishing a suitable hearing aid. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

Instrument purporting to be a purchase order but which was marked "paid in full, thank you" and executed on same day purchase was made and hearing aid delivered to buyer, was not a complete contract between the parties, but a mere receipt and, therefore, evidence of an oral express warranty made by seller to buyer as to fitness of aid for buyer's particular purpose was admissible. *Id.*

EVIDENCE OF ADMISSION BY RETAILER

In buyer's action against retailer for breach of warranty in sale of a "brunch" coat which ignited and burned the buyer when it came into contact with an electric stove, where retailer had filed a complaint against manufacturer of the garment seeking indemnity and complaint represented that the garment was flammable and not reasonably safe for the purposes for which it was intended, admitting the complaint to prove that the retailer claimed that the garment was flammable was proper. *Frank R. Jelleff, Inc. v. Braden* (1956, 98 U. S. App. D. C. 180, 233 F. 2d 671).

EVIDENCE OF OTHER COMPLAINTS

In buyer's action for breach of warranty in sale of a "brunch" coat which ignited and seriously burned buyer when it touched an electric stove, ruling excluding evidence as to the absence of complaints from other customers concerning the flammability of garments manufactured by the manufacturer of the coat purchased by plaintiff was not an abuse of discretion. *Frank R. Jelleff, Inc. v. Blanche K. Braden* (1956, 98 U. S. App. D. C. 180, 233 F. 2d 671).

In buyer's action for breach of warranty in sale of a "brunch" coat which ignited and seriously burned buyer when it came in contact with an electric stove, ruling excluding evidence as to the absence of complaints from other customers was not prejudicial in view of other testimony admitted. *Id.*

EVIDENCE, SUFFICIENCY

In buyer's action for breach of warranty in sale of a set of automobile tires, buyer's testimony that he contracted to purchase genuine white wall tires, after being shown a picture of a white wall tire by one of sellers, was sufficient to support finding that buyer relied upon seller's skill and judgment in selecting the particular tires. *Giove v. Lepcofker* (D. C. Mun. App. 1953, 101 A. 2d 259).

In action to rescind contract of sale for purchase of hearing aid and to recover purchase price, for breach of seller's implied warranty of fitness for buyer's needs, evidence supported finding that buyer had not waived right to rescind contract by retaining possession of hearing aid several months after date of purchase. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

GENERAL USE, FITNESS FOR

Record established that defendant in selling a dry-cleaning plant which, although not in operation at time contract was entered into, was complete and ready for operation save for connection of equipment on situs, impliedly warranted that plant would be ready for operation

on connection of existing equipment, and that such warranty was breached by the defendant. *Himmelstein v. Budner* (1950, 93 F. Supp. 946).

INTENDED USE, KNOWLEDGE OF

In action to rescind sale of hearing aid and to recover purchase price, finding that seller was fully aware of needs and purpose of plaintiff in buying hearing aid, and that in purchasing the hearing aid plaintiff relied upon seller's skill and judgment in prescribing, selecting and furnishing hearing aid, gave rise to implied warranty that the goods sold were reasonably fit for plaintiff's purpose. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

Representations made by seller of hearing aid to buyer that seller had been engaged in business for nearly 20 years and had experimented with hearing aids, were not merely expressions of opinion, but were representations of fact, and supported findings of reliance by buyer on further statements by seller as to the adaptability of the hearing aid to buyer's particular purpose. *Id.*

MANUFACTURER'S LIABILITY FOR NEGLIGENCE

Where elastic exerciser, which was made of rubber rope, and which was in shape of a child's skipping rope, was without defect or accessory gadgets and did not break or fail, manufacturer would not be liable, on grounds of negligence, for detachment of retina sustained by plaintiff who had purchased the exerciser and who was struck in eye when exerciser slipped off her foot while plaintiff was doing a simple exercise, even though manufacturer had failed to warn any user that the exerciser might slip off a foot in such manner. *Jamieson v. Woodward & Lothrop* (1957, 101 U. S. App. D. C. 32, 247 F. 2d 23).

PARTICULAR PURPOSE

Implied warranty under Uniform Sales Act to effect that when buyer makes known to seller purpose for which goods are required and relies on seller's judgment, there is implied warranty that goods shall be reasonably fit for such purpose, was not applicable to construction contract, in view of fact that furnishing of materials was only incidental to work and labor performed. *Foley Corp. v. Dove* (D. C. Mun. App. 1954, 101 A. 2d 841).

Evidence disclosed that defendants, sellers of set of automobile tires, breached implied warranty of fitness for particular purpose by selling to plaintiff as genuine white wall tires a set of black tires painted white from which white was rubbing off after several months' use. *Giove v. Lepcofker* (D. C. Mun. App. 1953, 101 A. 2d 259).

QUESTION FOR JURY

In action for breach of warranty of fitness by buyer of a "brunch" coat which ignited, causing serious injuries, when the coat came in contact with an electric stove, evidence as to the igniting and burning rate, the metallic burning odor, the completeness of destruction of the portions burned and the serious burns of the buyer presented a question for the jury. *Frank R. Jelleff, Inc. v. Braden* (1956, 98 U. S. App. D. C. 180, 233 F. 2d 671).

RELIANCE OF BUYER

In order to give rise to an implied warranty under the Uniform Sales Act, the buyer's reliance need not necessarily be a total reliance, and buyer may rely on his own judgment as to some matters, and on skill or judgment of seller as to others. *Himmelstein v. Budner* (1950, 93 F. Supp. 946).

SUMMARY JUDGMENT

In action by retailer of a smock to compel manufacturer to satisfy judgment obtained against retailer by purchaser of smock which ignited and burst into flames injuring the purchaser, in view of the admission that the retailer did not process or alter the smock, the question of whether it was in the same condition when sold to the purchaser as it was when sold by the manufacturer to the retailer was no longer a triable factual issue and summary judgment was properly granted for the retailer. *Frank R. Jelleff, Inc., etc. v. Pollak Bros. Inc.* (1957, 171 F. Supp. 467).

TRADE-NAME

Fact that hearing aid was sold under trade-name and designated so in purchase order did not exclude an implied warranty of fitness for buyer's use, for buyer had not relied upon the trade-name on the hearing aid, but had relied upon the seller's skill and judgment to furnish an appropriate hearing aid. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

WAIVER OF IMPLIED WARRANTY

Where implied warranty that a dry-cleaning plant which defendant sold to plaintiff would be ready for operation on connection of existing equipment was breached by defendant in that plant was defective and incapable of operation, and defendant did not attempt to correct defects, plaintiff did not waive warranty of fitness by substituting different equipment when plaintiff put plant into operation. *Himmelstein v. Budner* (1950, 93 F. Supp. 946).

WARRANTY AS TO ALTERED GOODS

Warranties given by a vendor ordinarily extend to and cover goods only in the condition in which they exist at the time of purchase and a vendor is not liable for breach of warranty, if, prior to the alleged breach, the vendee changes or alters the nature and quality of the goods in a manner not contemplated by the parties. *Frank R. Jelleff, Inc., etc. v. Pollak Bros. Inc.* (1957, 171 F. Supp. 467).

Chapter 12.—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

§ 28-1203 [11:79]. Rules for ascertaining intention.

NOTES TO DECISIONS

PASSAGE OF TITLE

When seller's payment or allowance of transportation charges on goods shipped to District of Columbia buyer from point outside District is a factor pointing toward passage of title in District, nevertheless the seller's payment of such charges may have to do with price only and not with delivery. *District of Columbia v. Upjohn Co.* (1950, 88 U. S. App. D. C. 34, 188 F. 2d 992).

SALE VERSUS CONSIGNMENT

In action for treble damages under Robinson-Patman Act based on alleged book sales to plaintiff's competitors at preferential prices and terms, refusal of plaintiff's requested instruction on distinction between consignment and sale was not error, in view of instruction given on question whether transactions were consignments or sales. *Student Book Co. v. Washington Law Book Co.* (1956, 98 U.S. App. D.C. 49, 232 F. 2d 49; certiorari denied 76 S. Ct. 474).

§ 28-1207 [11:83]. Sale by a person not the owner.

NOTES TO DECISIONS

ESTOPPEL

Where automobile owner believed that he was selling automobile to motor company agent, and alleged motor company agent gave owner stolen blank check filled in with a stolen motor company check writer in payment, and owner assigned certificate of title in blank, left his license plates on the automobile, and his registration card, driver's permit and insurance card on the steering post, owner was negligent and was precluded from asserting his title against bona fide purchaser for value. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

Rule that where no title has passed to buyer, seller may follow the property and recover it from an innocent purchaser does not operate to defeat a bona fide purchaser for value when the owner has been negligent or is otherwise estopped from asserting his title. *Id.*

NOTICE TO BUYER

Where buyer of automobile, which has been purportedly sold to alleged wrongdoer through fraudulent trans-

action in which wrongdoer had been assigned certificate of title in blank, believed that he was dealing with the person whose name appeared as owner on the certificate of title, the lack of a verification of a signature on the back of the certificate of title did not constitute notice that the wrongdoer had fraudulently secured title. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

REASONABLE CARE

In action by owner who sold his automobile to alleged motor company agent and received stolen blank check filled in with a stolen motor company check writer in payment against buyer of the automobile from the alleged agent, evidence sustained finding that buyer acted with reasonable care and was not negligent in failing to discover facts which may or may not have aroused the suspicions of a reasonable man. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

Chapter 13.—PERFORMANCE OF CONTRACT

§ 28-1301 [11:101]. Duty of seller to deliver and buyer to accept and pay for goods.

NOTES TO DECISIONS

ACTION FOR DAMAGES

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A. 2d 84).

§ 28-1308 [11:108]. Acceptance—Definition.

NOTES TO DECISIONS

ACCEPTANCE

If buyer resells or attempts to resell goods without first notifying original seller that he is rescinding because of defects, such act is sufficient "acceptance" to render buyer liable for full purchase price, but if seller, after receiving notice of defects, refuses to receive back the goods and fails to give instructions as to disposition to be made of them, buyer has right to resell on seller's account and is then liable only for proceeds. *North American Contracting Corp. v. E. L. Haley* (D. C. Mun. App. 1958, 140 A. 2d 314).

Evidence warranted finding that buyer accepted back-hoe by attempting to resell it and hence was liable for full purchase price despite alleged defects. *Id.*

§ 28-1309 [11:109]. Acceptance does not bar action for damages or breach of warranty—Notice required.

NOTES TO DECISIONS

DETERMINATION ON APPEAL

Where, though trial judge did not make specific finding on question whether person to whom buyer had sent notice was seller's agent, court did find that it was obligatory on buyer to contact seller, to charge seller with liability for breach of warranty, it would be assumed by court on appeal that trial court had held that buyer's obligation to notify seller was not satisfied by notice to other person because other person was not seller's agent. *Dodge Engineering Associates v. Noland Co. Inc.* (D. C. Mun. App. 1957, 128 A. 2d 655).

NOTICE OF DEFECTS

Even if goods involved were defective, seller was nonetheless entitled to full purchase price where seller never received any actual notice of alleged defects. *Dodge Engineering Associates v. Noland Co. Inc.* (D. C. Mun. App. 1957, 128 A. 2d 655).

Failure of buyer to comply with statute relating to notice to seller of alleged defects would preclude buyer from asserting any rights because of claimed breach of

warranty, and seller would be entitled to recover full amount of purchase price notwithstanding existence of alleged defects. *Id.*

NOTICE—TO WHOM GIVEN

Notice to manufacturer's representative, who had procured orders for boilers from buyer, of defects, was not notice to manufacturer's exclusive distributor, who had made contract with buyer and who in turn had sent orders on to manufacturer, where representative was not distributor's agent, and obligation still remained to give notice to seller to charge seller with liability for breach of warranty. *Dodge Engineering Associates v. Noland Co., Inc.* (D. C. Mun. App. 1957, 128 A. 2d 655).

SUBSTANTIAL COMPLIANCE

In action by seller for balance due on purchase price for certain boiler burner units, wherein buyer claimed right of reimbursement for expenses incurred in remedying alleged defects, evidence warranted finding that delivery of goods substantially met requirements of buyer and that delivery of goods was in accordance with order. *Dodge Engineering Associates v. Noland Co., Inc.* (D. C. Mun. App. 1957, 128 A. 2d 655).

§ 28-1311 [11: 111]. Buyer's liability for failing to accept delivery—Rights of seller.

NOTES TO DECISIONS

LIMITATIONS

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A. 2d 84).

Chapter 14.—RIGHTS OF UNPAID SELLER AGAINST GOODS

§ 28-1401 [11:112]. Unpaid seller—Definition.

NOTES TO DECISIONS

UNPAID SELLER, DEFINED

Under Maryland law, automobile retailer making cash sale of vehicle to buyer whose check in partial payment thereof was dishonored, was an unpaid seller and had a right, upon return of vehicle by buyer, to resell vehicle if it had a lien on it and if there was a default by buyer for an unreasonable length of time. *Suburban Cadillac-Oldsmobile Co. Inc. v. F. Bryars* (D.C. Mun. App. 1958, 144 A. 2d 695).

§ 28-1402 [11: 113]. Remedies of an unpaid seller.

NOTES TO DECISIONS

LIMITATIONS

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D.C. Mun. App. 1953, 99 A. 2d 84).

UNPAID SELLER, DEFINED

Under Maryland law, automobile retailer making cash sale of vehicle to buyer whose check in partial payment thereof was dishonored, was an unpaid seller and had a right, upon return of vehicle by buyer, to resell vehicle if it had a lien on it and if there was a default by buyer for an unreasonable length of time. *Suburban Cadillac-Oldsmobile Co., Inc. v. F. Bryars* (D.C. Mun. App. 1958, 144 A. 2d 695).

§ 28-1405 [11: 116]. When lien is lost.

NOTES TO DECISIONS

JUDGMENT

Where conditional seller was awarded a money judgment for amount due by conditional buyer under conditional sales contract, and there was no evidence as to who had possession of the merchandise, provision of the Uniform Sales Act that unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for price of goods, made it necessary to modify judgment by deleting from it provision reading that should merchandise be in possession of seller, merchandise should be delivered to buyer. *Marvins Credit v. Morgan* (D. C. Mun. App. 1950, 87 A. 2d 530).

UNPAID SELLER, DEFINED

Under Maryland law, automobile retailer making cash sale of vehicle to buyer whose check in partial payment thereof was dishonored, was an unpaid seller and has a right, upon return of vehicle by buyer, to resell vehicle if it had a lien on it and if there was a default by buyer for an unreasonable length of time. *Suburban Cadillac-Oldsmobile Co. Inc. v. F. Bryars* (D.C. Mun. App. 1958, 144 A. 2d 695).

§ 28-1409 [11: 120]. Unpaid seller's right to resell—Notice—Validity of sale.

NOTES TO DECISIONS

LIMITATIONS

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A. 2d 84).

UNPAID SELLER, DEFINED

Under Maryland law, automobile retailer making cash sale of vehicle to buyer whose check in partial payment thereof was dishonored, was an unpaid seller and has a right, upon return of vehicle by buyer, to resell vehicle if it had a lien on it and if there was a default by buyer for an unreasonable length of time. *Suburban Cadillac-Oldsmobile Co. Inc. v. F. Bryars* (D.C. Mun. App. 1958, 144 A. 2d 695).

Chapter 15.—ACTIONS FOR BREACH OF CONTRACT

§ 28-1502 [11: 124]. Action for damages for nonacceptance of the goods—Measure of damages.

NOTES TO DECISIONS

LIMITATIONS

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A. 2d 84).

§ 28-1507 [11: 129]. Remedies for breach of warranty—Rescinding the contract—Measure of damages.

NOTES TO DECISIONS

ELECTION OF REMEDIES

Where buyer of television set retained possession for 16 months despite immediate knowledge that set was

unsatisfactory, and made substantial part payments several weeks after delivery, he could not thereafter rescind sale for breach of warranty. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

A buyer loses his right to rescind and recover price paid by continuing to treat the property as his own. *Id.*

Where in buyer's action for rescission and seller's counterclaim for balance of purchase price, no objection was made by either party to submission of issue of damages for breach of warranty, case would be treated as claim for damages and amount of verdict for buyer would be subtracted from balance due seller. *Id.*

MEASURE OF DAMAGES

In case of rescission by buyer, buyer is entitled to full amount paid. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

REASONABLE TIME

What constitutes a reasonable time within which buyer may rescind sale for breach of warranty is ordinarily a question of fact, but where facts are clear and support but one inference, the question is one of law. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

Delay in giving notice of rescission of contract of sale may be excused if induced by acts or promises of seller. *Id.*

RECOUPMENT

In case of breach of warranty, one is not compelled to seek rescission, but may keep goods and set up against seller breach by way of recoupment in diminution of selling price. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

Chapter 17.—BULK SALES LAW

§ 28-1701 [11: 14]. Sales in bulk—Written statement as to creditors.

NOTES TO DECISIONS

ATTACHING CREDITORS RIGHT TO HEARING

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith v. Anderson* (D. C. Mun. App. 1954, 107 A. 2d 126).

FINAL ORDER

Where defendants did not answer complaint, based on violation of Bulk Sales Law, within time required and a default was entered by clerk, with notation "to be set for ex parte proof v. both defendants," but before assignment commissioner had set date for taking of proof, one defendant filed motion to set aside the entry of default, denial of motion was not a final order or judgment and was not appealable. *Efantis v. Decker Distributing Co.* (D. C. Mun. App. 1957, 135 A. 2d 655).

PARTNERSHIP DISSOLUTION

The District of Columbia Bulk Sales Law has no applicability to situation where one partner transfers the assets of a partnership to another partner pursuant to dissolution agreement. *Barlow v. Cornwell* (D. C. Mun. App. 1956, 125 A. 2d 63).

PREVIOUS DECISIONS, EFFECT OF

Where garnishee's answer in suit by attaching creditor alleged that certain trust holders, agents and attorneys enjoyed preferred lien status as to proceeds of sale of grocery business of debtor, attaching plaintiff who had filed traverse was entitled to determination of such alleged preferred lien status and was not bound by amount paid. *Troshinsky v. Feldman* (D. C. Mun. App. 1951, 81 A. 2d 91).

§ 28-1702 [11: 15]. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

NOTES TO DECISIONS

PREVIOUS DECISIONS, EFFECT OF

Where garnishee's answer in suit by attaching creditor alleged that certain trust holders, agents and attorneys enjoyed preferred lien status as to proceeds of sale of grocery business of debtor, attaching plaintiff who had filed traverse was entitled to determination of such alleged preferred lien status and was not bound by answer of garnishee. *Troshinsky v. Feldman* (D. C. Mun. App. 1951, 81 A. 2d 91).

§ 28-1703 [11: 16]. Sale in bulk—Definition.

NOTES TO DECISIONS

NECESSITY OF OBJECTION

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for new trial. *Ford v. Spivey et al.* (D. C. Mun. App. 1951, 79 A. 2d 565).

PARTNERSHIP DISSOLUTION

The District of Columbia Bulk Sales Law has no applicability to situation where one partner transfers the assets of a partnership to another partner pursuant to dissolution agreement. *Barlow v. Cornwell* (D. C. Mun. App. 1956, 125 A. 2d 63).

Chapter 19.—OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RIGHTS

§ 28-1901 [27: 21]. Obligation of warehouseman to deliver—Excuse for refusal.

NOTES TO DECISIONS

ESTOPPEL

Where plaintiff's wife deposited household goods in warehouse of defendant giving non-negotiable receipt not requiring surrender of receipt in advance of withdrawal, and defendant refused to deliver goods to plaintiff paying charges but not surrendering receipt before delivery as requested by defendant, and plaintiff in reliance thereon did not get written authorization to withdraw from wife, and thereafter defendant permitted plaintiff to withdraw a part and implied that defendant had contractual relationship with plaintiff, defendant was estopped from asserting that plaintiff was not holder of receipt, and hence plaintiff's demand for goods was valid and he could recover goods or their value without paying storage charges from demand. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 90 U. S. App. D. C. 202, 194 F. 2d 885).

SURRENDER OF NON-NEGOTIABLE RECEIPT

The Uniform Warehouse Receipts Act does not require holder of non-negotiable warehouse receipt to surrender receipt before withdrawal of goods. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 90 U. S. App. D. C. 202, 194 F. 2d 885).

Chapter 22.—INTERPRETATION

§ 28-2203 [27: 1]. Definitions.

NOTES TO DECISIONS

HOLDER

Where plaintiff's wife deposited household goods in warehouse of defendant giving non-negotiable receipt not requiring surrender of receipt in advance of withdrawal, and defendant refused to deliver goods to plaintiff paying charges but not surrendering receipt before delivery as requested by defendant, and plaintiff in reliance thereon did not get written authorization to withdraw from wife, and thereafter defendant permitted plaintiff to withdraw a part and implied that defendant had contractual relationship with plaintiff, defendant was estopped from asserting that plaintiff was not holder

of receipt, and hence plaintiff's demand for goods was valid and he could recover goods or their value without paying storage charges from demand. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 90 U. S. App. D. C. 202, 194 F. 2d 885).

Chapter 23.—FIDUCIARIES—UNIFORM ACT

§ 28-2302 [11:32]. Application of payment made to fiduciaries.

NOTES TO DECISIONS

DESIGNATION OF PAYEE AS FIDUCIARY

Where corporation lending money to incompetent made checks payable to members of incompetent's committee without adding word "committee" to checks and members of committee allegedly embezzled proceeds of checks, recovery against indorsees cashing checks for members of committee was not precluded merely by absence of word "committee" from checks, and corporation would not be responsible for loss on such theory, in absence of evidence that indorsees had knowledge that members of committee were breaching their fiduciary obligation or had knowledge of such facts rendering the taking of checks by indorsees bad faith. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 93 U. S. App. D. C. 280, 210 F. 2d 728).

§ 28-2304 [11:34]. Transfer of negotiable instruments by fiduciary.

NOTES TO DECISIONS

KNOWLEDGE OF PAYEE

Where plaintiff's check was presented at a bank by president of the payee personally who endorsed on the back of it the name of the company and his own name as president and in addition signed his own name as individual and the bank credited the amount of the check to the personal account of the president, maker was not entitled to recover the amount thereof from the bank where there was no suggestion of bad faith by the bank and no proof which would have put it on notice that the president was guilty of a breach of faith in negotiating the check and depositing the proceeds to his own credit. *Evans v. Prentice et al.* (D.C. Mun. App. 1951, 79 A 2d 396).

LIABILITY OF LENDER

Where court authorized members of incompetent's committee to negotiate loan on security of incompetent's realty, lender made checks payable to members of committee without adding word "committee" and such members thereafter allegedly embezzled proceeds of checks, omission of word "committee" was not cause of alleged embezzlement, making lender responsible therefor, in view of fact that presence of word would not have prevented members from cashing checks or from embezzling proceeds. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 93 U. S. App. D. C. 280, 210 F. 2d 728).

Chapter 24.—BONDS AND UNDERTAKINGS

§ 28-2401 [3:1]. Bond—Definition.

NOTES TO DECISIONS

ACTION ON BOND

Action to recover on bond for damages from wrongful suing out of an attachment is maintainable under statute providing that when a bond is referred to in statutes it signifies an obligation in a certain sum or penalty subject to condition on breach of which bond becomes absolute and is enforceable by action. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534)

AMOUNT OF RECOVERY

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by

reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 255 F. 2d 534).

§ 28-2402 [3:2]. Undertaking—Definition.

NOTES TO DECISIONS

AUTOMOBILE NEGLIGENCE ACTION AGAINST NONRESIDENT

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined by Code as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

§ 28-2403 [3:3]. Fiduciary's bond—Undertaking to be given in lieu thereof—Form—Judgments thereon—Jurisdiction of District Court—Actions, remedies, proceedings.

NOTES TO DECISIONS

AMOUNT OF RECOVERY

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U.S. App. D.C. 125, 255 F. 2d 534).

WRONGFUL SUIT OUT OF ATTACHMENT

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U. S. App. D. C. 125, 225 F. 2d 534).

§ 28-2404 [3:4]. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.

NOTES TO DECISIONS

AMOUNT OF RECOVERY

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *A. B. Davis v. Peerless Ins. Co. et al.* (1958, 103 U.S. App. D.C. 125, 255 F. 2d 534).

§ 28-2406 [3:6]. Action upon bond to United States by fiduciary or public officer in which private person has an interest.

NOTES TO DECISIONS

ISSUES ON APPEAL

Where person claiming to have posted collateral under agreement for surety bond for release of certain alien did not, in suit for recovery for alleged breach of such agreement, mention statute providing cause of action for those aggrieved by breach of bond given to United States to secure performance of a duty, such statute could not

be relied upon on appeal. *Chong Moe Dan v. Maryland Casualty Co. of Baltimore* (D. C. Mun. App. 1952, 93 A. 2d 286).

QUESTIONS ON APPEAL

Where person claiming to have posted collateral under agreement for surety bond for release of certain alien did not, in suit for recovery for alleged breach of such agreement, mention statute providing cause of action for those aggrieved by breach of bond given to United States to secure performance of a duty, such statute could not be relied upon on appeal. *Chong Moe Dan v. Maryland Casualty Co. of Baltimore, Inc.* (D. C. Mun. App. 1952, 93 A. 2d 286).

Chapter 25.—ASSIGNMENT OF CHOSSES IN ACTION

§ 28-2501 [2:1]. Judgment.

NOTES TO DECISIONS

ATTORNEYS' EQUITABLE LIEN

The interest in client's judgment of attorneys created by contingent fee contract was not equivalent to an assignment of a cause of action and resulting judgment, but rather attorneys' interest was like an equitable lien, and, hence, attorneys, in seeking to enforce collection of the judgment for benefit of client and themselves upon refusal of client to do so, was not required to observe provisions of statute relating to assignment of judgments. *Falcone and Millstein v. Hall et al.* (1956, 98 U. S. App. D. C. 363, 235 F. 2d 860).

§ 28-2503 [2:3]. Nonnegotiable contracts.

NOTES TO DECISIONS

ACTION BY ASSIGNOR AFTER ASSIGNMENT

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, corporation had no right to enforce such claim. *York Blouse Corp. v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

In action by corporation, which had sold its claim against defendant prior to bringing of action, for purchase price of certain merchandise, allegedly sold and delivered, request of corporation for leave to add as additional parties plaintiff the stockholders of corporation was properly denied. *Id.*

Where assignors assigned claims for the purpose of permitting assignee to manage the litigation and there was no evidence of fraud or any other circumstance which raised any questions as to assignee's legal title to the claims he was asserting, assignee had the right to maintain an action on the claims assigned in his own name. *Compton v. Atwell* (D. C. Mun. App. 1952, 86 A. 2d 623).

INDISPENSABLE PARTY

When the rights of an assignee will be affected by an action, the assignee is an indispensable party. *York Blouse Corp. v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

REAL PARTY IN INTEREST

Where defendant owed four small accounts and three of his creditors made written assignment, purporting to be absolute, of their accounts to the fourth creditor, but the creditors had orally agreed that assignments were only for purpose of enabling one creditor to sue, action brought by assignee was within exception provided by Municipal Court Rules allowing a party to sue in his own name without joining party for whose benefit action was brought. *Compton v. Atwell* (1953, 93 U. S. App. D. C. 99, 207 F. 2d 139).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, assignee was the real party in interest and indispensable party. *York Blouse Corp. v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

When substantive law gives an assignee the right to sue in his own name and rule of court requires suit by the real party in interest, action on assigned claim must be brought by the assignee in his own name. *Id.*

Chapter 26.—ASSIGNMENTS FOR BENEFITS OF CREDITORS

§ 28-2602 [2:22]. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.

NOTES TO DECISIONS

JURISDICTION OF MUNICIPAL COURT

Where dispute between judgment creditor and garnishee involved much less than \$3,000 jurisdiction of Municipal Court for District of Columbia, Civil Division, such court had jurisdiction to decide that there were funds in garnishee's hands which should be subjected to payment of judgment, and in so deciding such court was not administering or supervising a trust which should have been under supervision and control of United States District Court and which was in an amount far in excess of such \$3,000 jurisdictional amount, notwithstanding that garnishee, in acquiring assets and funds of judgment debtor, may have acted as trustee for benefit of creditors in transactions totalling some \$35,000. *J. Pinkston v. N. M. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

VALIDITY OF DEED OF TRUST

Where deed of trust conveying assets of company was not recorded within five days from date of execution as required by District of Columbia statute, company had its principal place of business in District of Columbia but trustee was not resident of district as required by statute, deed reserved surplus for benefit of company's stockholders, no creditors were named therein, deed authorized trustee to operate business as far as seemed practicable to trustee and person who executed deed as secretary for company had not held that office or any other office for some eight months, deed was invalid and did not create a lien or right superior to that of attaching judgment creditor, and claim of trustee to commission must yield to claim of judgment creditor. *J. Pinkston v. N. M. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

§ 28-2603 [2:23]. Bond of assignee.

NOTES TO DECISIONS

VALIDITY OF DEED OF TRUST

Where deed of trust conveying assets of company was not recorded within five days from date of execution as required by District of Columbia statute, company had its principal place of business in District of Columbia but trustee was not resident of district as required by statute, deed reserved surplus for benefit of company's stockholders, no creditors were named therein, deed authorized trustee to operate business as far as seemed practicable to trustee and person who executed deed as secretary for company had not held that office or any other office for some eight months, deed was invalid and did not create a lien or right superior to that of attaching judgment creditor, and claim of trustee to commission must yield to claim of judgment creditor. *J. Pinkston v. N. M. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

Chapter 27.—INTEREST AND USURY

§ 28-2702 [17:2]. Rate of interest—Express contracts.

NOTES TO DECISIONS

BURDEN OF PROOF

Under usury statute burden is upon borrower to show that contract was usurious. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U. S. App. D. C. 33, 249 F. 2d 938).

COMMISSION IS ADDITIONAL "INTEREST"

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U. S. App. D. C. 33, 249 F. 2d 938).

CONTRACT IN WRITING

Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U. S. App. D. C. 33, 249 F. 2d 938).

§ 28-2703 [17:3]. Usury—Definition.

NOTES TO DECISIONS

BONUS AS USURY

Where face amount of promissory note was \$2,133 payable three years after date with interest at six percent per annum, but only \$1,933 was advanced to maker of note, with \$200 constituting a bonus, such note was usurious under usury statute. *Holcombe v. O'Sullivan* (D. C. Mun. App. 1952, 93 A. 2d 96).

BURDEN OF PROOF

Under usury statute burden is upon borrower to show that contract was usurious. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U. S. App. D. C. 33, 249 F. 2d 938).

In action on promissory note defendant had burden of proving alleged usury but defendant was not required to prove usury where usury was established by plaintiff's evidence. *Holcombe v. O'Sullivan* (D. C. Mun. App. 1952, 93 A. 2d 96).

COMMISSION IS ADDITIONAL "INTEREST"

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U.S. App. D. C. 33, 249 F. 2d 938).

CONTRACT IN WRITING

Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 102 U. S. App. D. C. 33, 249 F. 2d 938).

CONSTRUCTION

It is not usurious to purchase a note at a discount. *Elliott v. Schlein* (D. C. Mun. App. 1954, 104 A. 2d 418).

Under usury statute it is the agreement and not necessarily its performance which renders debit usurious. *Holcombe v. O'Sullivan* (D. C. Mun. App. 1952, 93 A. 2d 96).

DAMAGES

Borrower who is beneficiary of usurious loan cannot recover for damage allegedly sustained as a result of the transaction. *M. W. Royall v. L. Yudelevit et al.* (1958, 161 F. Supp. 217).

DEDUCTING COMMISSIONS

The usury statute may be violated by deducting a commission in advance as well as by any other means by which money in excess of legal rate is exacted. *Holcombe v. O'Sullivan* (D. C. Mun. App. 1952, 93 A. 2d 96).

EVIDENCE

In action to recover for wrongful foreclosure of deed of trust, evidence would sustain plaintiff's contention that loan involved was usurious. *M. W. Royall v. L. Yudelevit et al.* (1958, 161 F. Supp. 217).

EXTENT OF FORFEITURE

Under the statute providing as to a usurious contract that creditor shall forfeit the whole of the interest, forfeiture applies not only to the usurious excess, but also to the lawful interest included in the contract rate, and

statute forfeits all of the interest contracted for, if unpaid, or permits recovery, if paid by action within one year after payment. *Everett A. R. Searl et ano. v. Donald M. Earll* (1954, 95 U. S. App. D. C. 151, 221 F. 2d 24).

HOLDER IN DUE COURSE

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee was not, as he claimed, a holder in due course for value without notice, but that he had actually and knowingly lent money to makers and had used payee as an intermediary to avoid the usury statute. *Meredith et al. v. Cabell et al.* (1954, 94 U. S. App. D. C. 73, 211 F. 2d 810).

JUDGMENT

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes who was in fact the actual lender, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee had advanced to the makers, in return for the notes, only the sum of \$7,510, of which \$5,476.10 had been repaid, and warranted judgment that, unless unpaid balance be paid within 30 days, trustees designated in deeds of trust might sell property to satisfy amount found to be due. *Meredith et al. v. Cabell et al.* (1954, 94 U. S. App. D. C. 73, 211 F. 2d 810).

LAWS APPLICABLE TO CONTRACT

In absence of evidence to contrary it would be presumed that a promissory note which was dated at Washington, D. C., the place of payment being blank, was made in District of Columbia and was payable at place of making and was therefore subject to District of Columbia usury law. *Holcombe v. O'Sullivan* (D. C. Mun. App. 1952, 93 A. 2d 96).

LIABILITY OF AGENT

An agent was personally liable for unlawful interest which he turned over to his principal with knowledge that the principal was not entitled thereto. *Everett A. R. Searl et ano. v. Donald M. Earll* (1954, 95 U. S. App. D. C. 151, 221 F. 2d 24).

In suit to recover the unpaid balance on a note given by defendants to plaintiff as commission for securing a loan from plaintiff's wife with counterclaim for usury, plaintiff was subject to separate liability and to a suit individually without joinder of his wife as principal. *Id.*

LIMITATIONS OF TIME

In suit to recover the unpaid balance of a note with defense of usury, where concealment by plaintiff from defendants of the fact that the lender was his wife constituted fraud, bar of limitations against assertion of the defense of usury did not begin to run against the defendants until the fraud was discovered. *Everett A. R. Searl et ano. v. Donald M. Earll* (1954, 95 U. S. App. D. C. 151, 221 F. 2d 24).

SUFFICIENCY OF PLEADING

In suit to recover the unpaid balance on a note, counterclaim was a sufficient pleading of the defense of usury as a vindication of the defendant's legal right or the remedying of a legal wrong. *Everett A. R. Searl et ano. v. Donald M. Earll* (1954, 95 U. S. App. D. C. 151, 221 F. 2d 24).

USURY AS A DEFENSE

Usury can be invoked as a defense but not as an affirmative cause of action; that is, usury may be used as a shield but not as a sword. *M. W. Royall v. L. Yudelevit et al.* (1958, 161 F. Supp. 217).

§ 28-2704 [17:4]. Action to recover usury paid—Limitation.

NOTES TO DECISIONS

LIMITATION IMPOSED BY STATUTE

The time limitation in statute permitting recovery of all interest paid on a usurious transaction provided suit is begun within one year from date of such payment,

is not a general statute of limitations but is a limitation imposed by statute which created right and is limitation of right itself. *Earll v. Searl* (D. C. Mun. App. 1953, 101 A. 2d 248).

In action to recover unpaid balance on note given by defendants to plaintiff as commission for obtaining a loan which was made by plaintiff's wife to defendants through straw party, one year time limitation would not be extended in absence of evidence of fraud on part of plaintiff in concealing name of actual lender. *Id.*

PLEADING

Where borrowers sought to recover usurious interest more than one year after last payment, lender's agent did not waive defense of one year time limitation by failing to plead it in view of fact that time limitation was imposed by statute which created the right and unlike statute of limitations it did not have to be pleaded in defense. *Earll v. Searl* (D. C. Mun. App. 1953, 101 A. 2d 248).

PURCHASE AT DISCOUNT

Evidence did not sustain finding that lender was purchaser of note secured by trust deed and was not in fact the lender of the amount loaned thereon but established that the pretense of buying the note from the vendor was nothing more than an attempt to cover up the usurious loan, and hence the borrower was entitled to recover usurious interest paid. *Elliott v. Schlein* (D. C. Mun. App. 1954, 104 A. 2d 418).

USURY ASSERTED AS A DEFENSE

Although plaintiff's action to recover unpaid balance on note given by defendants to plaintiff as commission for obtaining a loan was brought more than one year after last payment, usury would defeat recovery pro tanto on the note, but affirmative relief by way of recovery of payments made was barred by one year statute. *Earll v. Searl* (D. C. Mun. App. 1953, 101 A. 2d 248).

§ 28-2707. Interest on judgments for liquidated debt.

NOTES TO DECISIONS

INTEREST BEFORE JUDGMENT

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc. v. Pennsylvania Railroad Co., and the United States of America et ano.* (1955, 97 U. S. App. D. C. 52, 228 F. 2d 23).

LIQUIDATED DEBT

Provision of statute of District of Columbia permitting interest when jury determines that it is necessary to fully compensate the plaintiff, is not applicable where action is to recover liquidated indebtedness, and in such case statute dealing with interest on judgments for liquidated debt is applicable. *A. Blustein v. Eugene Sobel Co., Inc.* (1959, 105 U.S. App. D.C. 32, 263 F. 2d 478).

In action for damages for breach of warranty in contract for purchase by plaintiff of capital stock of corporation engaged in wholesale jewelry business that corporation's books of account included accurate and complete record of all liabilities of corporation for income taxes, jury was properly directed to include interest on amount which plaintiff had paid for corporation's deficiency income taxes, penalty and interest from date tax was due

since indebtedness of defendant to plaintiff became a "liquidated debt" within meaning of statute providing for interest on judgments for a "liquidated debt," when settlement was entered into and payment was made by plaintiff in accordance with settlement. *Id.*

§ 28-2708. Interest on judgments for damages in actions in contract or tort.

NOTES TO DECISIONS

INTEREST BEFORE JUDGMENT

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc. v. Pennsylvania Railroad Co. and the United States of America et ano.* (1955, 97 U. S. App. D. C. 52, 228 F. 2d 23).

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In action for damages for breach of warranty in contract for purchase by plaintiff of capital stock of corporation engaged in wholesale jewelry business that corporation's books of account included accurate and complete record of all liabilities of corporation for income taxes, jury was properly directed to include interest on amount which plaintiff had paid for corporation's deficiency income taxes, penalty and interest from date tax was due, since indebtedness of defendant to plaintiff became a "liquidated debt" within meaning of statute providing for interest on judgments for a "liquidated debt," when settlement was entered into and payment was made by plaintiff in accordance with settlement. *Id.*

Chapter 28.—COMPUTATION OF TIME

Sec.

28-2804. Daylight-saving time—Authority of Board of Commissioners.

§ 28-2804. Daylight-saving time—Authority of Board of Commissioners.

The Board of Commissioners of the District of Columbia is authorized to advance the standard time applicable to the District one hour for the period commencing not earlier than the last Sunday of April of each year and ending not later than the last Sunday of October of each year. Any such time established by the Commissioners under the authority of this Act shall, during the period of the year for which it is applicable, be the standard time for the District of Columbia. (April 28, 1953, 67 Stat. 23, ch. 30, § 1; July 2, 1956, 70 Stat. 482, ch. 491, § 1.)

AMENDMENTS

1956—The act of July 2, 1956, cited to text, amended the section by striking out the words "last Sunday of September" and inserting in lieu thereof the words "last Sunday of October".

TITLE 29.—CORPORATIONS

Chap.	Sec.
9. District of Columbia Business Corporation Act.....	29-901

Chapter 2.—BUSINESS CORPORATIONS

§ 29-201 [5:261]. Formation—Certificate—Exception—Dealing in real estate.

NOTES TO DECISIONS

PRINCIPAL PLACE OF BUSINESS

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 105 U.S. App. D.C. 378, 267 F. 2d 655).

§ 29-202 [5:262]. Contents of certificate.

NOTES TO DECISIONS

PRINCIPAL PLACE OF BUSINESS

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 105 U.S. App. D.C. 378, 267 F. 2d 655).

§ 29-204 [5:264]. Trustees—Qualifications—Election.

AMENDMENT

1959.—The act of July 13, 1959, 73 Stat. 181, Pub. L. 86-83, struck out the words "nor more than fifteen." The result of the amendment is to remove the limitation on the maximum of trustees.

§ 29-216 [5:276]. Purchase of stock of other companies unlawful.

It shall not be lawful for any corporation, except a charitable, educational, or religious corporation incorporated under the laws of the District of Columbia or under any Act of Congress, to use its funds to purchase stock in any other corporation. (As amended Mar. 14, 1952, 66 Stat. 24, ch. 103, § 1.)

AMENDMENTS

1952.—The act of Mar. 14, 1952, added the exception. The eighth word in the section was changed from "company" to "corporation."

§ 29-218 [5:278]. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.

NOTES TO DECISIONS

EVIDENCE

In order for a corporate creditor to impose personal liability on three trustees of corporation on any theory of

transfer of funds in an attempt to hinder or defraud creditors, distribution of corporate assets to themselves in violation of statute, or breach of fiduciary obligation to account to creditors, it was necessary for contractor to prove assets in question ultimately were received by such trustees, or disposed of by them in contravention of contractor's rights as a creditor. *Askew v. Randolph Carney Co., Inc., et al.* (D. C. Mun. App. 1957, 128 A. 2d 788).

§ 29-240 [5:303]. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

NOTES TO DECISIONS

STOCKHOLDER'S SUIT

Under statute authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholder's shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

Chapter 5.—RELIGIOUS SOCIETIES

§ 29-507 [5:317]. Corporate powers.

NOTES TO DECISIONS

ACTION BY TRUSTEES

Under statute relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

§ 29-515 [5:325]. Suits by trustees.

NOTES TO DECISIONS

CONSTRUCTION

Under statute relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

§ 29-601 [5:121]. Formation—Certificate—Contents.

NOTES TO DECISIONS

OBJECT OF ORGANIZATION

In order to qualify under statute exempting real estate belonging to educational institutions from taxation in District of Columbia, institution must render service which relieves District of Columbia of burden it otherwise might assume. *Washington Chapter of American Institute of Banking v. District of Columbia* (1953, 92 U. S. App. D. C. 139, 203 F. 2d 68).

§ 29-603. Trustees.

NOTES TO DECISIONS

SUIT BY UNITED STATES

The United States, as parens patriae, has authority to bring action on behalf of unknown beneficiaries of

Foundation organized as charitable corporation under District of Columbia law to cancel its trustees' transfers of shares of building corporation's stock owned by Foundation and require return of such shares to Foundation by transferees. *United States v. Mount Vernon Mortgage Corp.* (1954, 128 F. Supp. 629).

Chapter 7.—DISSOLUTION

§ 29-719 [5: 409]. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.

NOTES TO DECISIONS

PROPER PARTY

Statute providing in part that whenever District Attorney of District of Columbia should become satisfied that any corporation organized under laws of District had been guilty of such misuse of its powers as would make proper the forfeiture of its charter, district attorney should file petition in district court in name of United States for rule to show cause why forfeiture should not be granted, requires that proceeding be initiated by United States District Attorney, and afforded no remedy to one who sought to revoke charter of bar association by reason of its alleged misuse. *United States v. Bar Ass'n of District of Columbia* (1952, 91 U. S. App. D. C. 3, 197 F. 2d 408).

§ 29-726 [5: 416]. Involuntary dissolution at the suit of creditors.

NOTES TO DECISIONS

DISTRICT TAX CLAIMS

District of Columbia Revenue Act provision giving priority to District for unpaid gross sales taxes against a taxpayer in bankruptcy before all claimants of whatsoever kind or nature and making penalties and interest a prior and preferred claim gives District a priority in whatever local insolvency proceedings are instituted where bankrupt person or corporation involved is not eligible to become a bankrupt under the Bankruptcy Act. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 633).

Chapter 9.—DISTRICT OF COLUMBIA BUSINESS CORPORATION ACT

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- 29-902. Definitions.
- 29-903. Purposes.
- 29-904. General powers.
- 29-904a. Power of corporation to acquire its own shares.
- 29-904b. Dealing in real estate as corporate purpose.
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§ 29-901. Short title.

This chapter shall be known and may be cited as the "District of Columbia Business Corporation Act". (June 8, 1954, 68 Stat. 179, ch. 269, § 1, effective Dec. 5, 1954.)

EFFECTIVE DATE

The act of June 8, 1954, provided that the act take effect 180 days after the date of approval as follows:

"TIME OF TAKING EFFECT

"SEC. 146. This Act shall take effect one hundred and eighty days after the date of its approval, and thereafter

no corporation eligible to be formed under this Act shall be incorporated under any other Act or statute now in force in the District of Columbia."

The 180-day period ended on December 5, 1954.

CROSS REFERENCE

See note following section 29-935 concerning transfer of functions by the Commissioners of the District of Columbia.

§ 29-902. Definitions.

As used in and for the purposes of this chapter, unless the context otherwise requires—

(a) "Corporation" or "domestic corporation", except as used in section 29-953, means a corporation subject to the provisions of this chapter, except a foreign corporation.

(b) "Foreign corporation" means a corporation for profit organized under laws other than the laws of the District of Columbia and special Acts of Congress.

(c) "Articles of incorporation" include the original articles of incorporation and all amendments thereto, and include articles of merger or consolidation.

(d) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(e) "Incorporator" means one of the signers of the original articles of incorporation.

(f) "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

(g) "Shareholder" means one who is a holder of record of shares in a corporation.

(h) "Authorized shares" means the aggregate number of shares of all classes, whether with or without par value, which the corporation is authorized to issue.

(i) Shares of its own stock belonging to a corporation shall be deemed to be "issued" shares, but not "outstanding" shares.

(j) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares then issued having a par value and (2) the consideration received by the corporation for all shares then issued without par value, except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by law, and (3) such amounts not included in clauses (1) or (2) of this paragraph as may have been transferred to the stated capital account of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus such formal reductions from said sum as may have been effected in a manner permitted by law.

(k) "Paid-in surplus" means all that part of the consideration received by the corporation for, or on account of, all shares issued which does not constitute stated capital, whether heretofore or hereafter created by (1) the receipt by the corporation, for, or on account of, the issuance of shares having a par value of consideration in excess of the par value of such shares or (2) the allocation of any part of the consideration received by the corporation for,

or on account of, the issuance of shares in a manner permitted by law or (3) a reduction of stated capital under this chapter, minus such formal reductions of paid-in surplus as may have been effected in a manner permitted by law.

(l) "Net assets", for the purpose of determining the right of a corporation to purchase its own shares and of determining the right of a corporation to declare and pay dividends and the liabilities of directors therefor, shall not include shares of its own stock belonging to such corporation.

(m) "Registered office" means that office maintained by the corporation, the address of which is on file with the Commissioners.

(n) "Insolvent" means that the corporation is unable to pay its debts as they become due in the usual course of its business.

(o) "State" means any State, Territory, colony, dependency, or possession of the United States of America, or any foreign country.

(p) "Commissioners" means the Commissioners of the District of Columbia or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter. It shall be the duty of the Recorder of Deeds and of any other officer or agency of the Government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioners pursuant to this chapter.

(q) "District" means the District of Columbia.

(r) "The court", except where otherwise specified, means the United States District Court for the District of Columbia. (June 8, 1954, 68 Stat. 179, ch. 269, § 2, effective Dec. 5, 1954; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 5.)

AMENDMENTS

1954—The act of August 3, 1954, amended clause (p) of section 29-902 by adding the second sentence relating to the duty of the Recorder of Deeds and other officers and agencies to perform delegated functions.

§ 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided*, That nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations: *Provided further*, That no corporation may be organized under this chapter unless the place where it conducts its principal business is located within the District of Columbia. (June 8, 1954, 68 Stat. 180, ch. 269, § 3, effective Dec. 5, 1954.)

NOTES TO DECISIONS

IN GENERAL

In determining whether proviso of Business Corporation Act of District of Columbia that no corporation may be organized unless the place where it conducts its principal business is located within District prohibits a corporation

from conducting business in a city outside of District, court would examine the Act as a whole. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

"ORGANIZED" CONSTRUED

Under Business Corporation Act of District of Columbia providing that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia", the word "organized" has relation only to time of incorporation and hence such provision would not prohibit corporation operating professional baseball team from transferring its franchise from District to a city outside of District since the usual meaning of word "organized" when used in relation to corporate structures is in the sense of having been brought into being or created and the word as used in the Act sounds in praesenti and means the creation of a corporation without reference to the future. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PRINCIPAL PLACE OF BUSINESS

The proviso of the statute that no corporation may be organized thereunder unless place where is conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 105 U.S. App. D.C. 378, 267 F. 2d 655).

The proviso of Business Corporation Act of District of Columbia that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-904. General powers.

Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own,

hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(f) To lend money to, and otherwise assist, its employees, other than its officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations organized under the laws of the District of Columbia, of foreign corporations, and of associations, partnerships, or individuals.

(h) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(i) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within and without the District of Columbia and to exercise in any State, Territory, district, colony, or possession of the United States, or in any foreign country the powers granted by this chapter, subject to the laws of such State, Territory, District, colony, or possession of the United States, or such foreign country.

(k) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation.

(m) To make contributions to charitable organizations, and, in time of war, to transact any lawful business in aid of the United States.

(n) To cease its corporate activities and surrender its corporate franchise.

(o) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

(p) To indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director

or officer or person shall be adjudged in such action suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any bylaw, agreement, vote of stockholders, or otherwise. (June 8, 1954, 68 Stat. 180, ch. 269, § 4, effective Dec. 5, 1954.)

NOTES TO DECISIONS

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-904a. Power of corporation to acquire its own shares.

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares: *Provided*, That it shall not purchase, either directly or indirectly, its own shares when its net assets are less than the sum of its stated capital, its paid-in surplus, any surplus arising from unrealized appreciation in value or revaluation of its assets and any surplus arising from surrender to the corporation of any of its shares, or when by so doing its net assets would be reduced below such sum. Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of—

(a) eliminating fractional shares;

(b) collecting or compromising claims of the corporation or any indebtedness to the corporation;

(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter;

(d) effecting the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price, but no redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution. (June 8, 1954, 68 Stat. 181, ch. 269, § 5, effective Dec. 5, 1954.)

§ 29-904b. Dealing in real estate as corporate purpose.

A corporation having among its purposes, as set forth in its articles of incorporation, that of acquiring, owning, using, conveying, and otherwise disposing of and dealing in real property or any interest therein, shall have power and authority so to do without limitation. (June 8, 1954, 68 Stat. 182, ch. 269, § 6, effective Dec. 5, 1954.)

§ 29-905. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted—

(a) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(c) in a proceeding by the Commissioners, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioners to enjoin the corporation from the transaction of unauthorized business. (June 8, 1954, 68 Stat. 182, ch. 269, § 7, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 1, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the word "authorized" in subsection (a).

EFFECTIVE DATE OF AMENDMENT

1957—Section 36 of the act of September 2, 1957, cited to text, made the act effective "on the thirtieth day after its approval".

§ 29-906. Corporate name.

The corporate name—

(a) shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation au-

thorized to transact business in the District of Columbia, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress. (June 8, 1954, 68 Stat. 183, ch. 269, § 8, effective Dec. 5, 1954.)

§ 29-906a. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by—

(1) any person intending to organize a corporation under this chapter or any Act for the organization of a corporation under the laws of the District of Columbia;

(2) any corporation organized under this chapter proposing to change its name;

(3) any corporation organized under any law other than this chapter proposing to reincorporate or incorporate under this chapter;

(4) any foreign corporation intending to make application for a certificate of authority to transact business in the District of Columbia;

(5) any foreign corporation authorized to transact business in the District of Columbia and intending to change its name;

(6) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in the District of Columbia.

(b) The reservation shall be made by filing with the Commissioners an application to reserve a specified corporate name, executed by the applicant. If the Commissioners find that the name is available for corporate use, they shall reserve the same for the exclusive use of the applicant for a period of sixty days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing with the Commissioners a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (June 8, 1954, 68 Stat. 183, ch. 269, § 9, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 2, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, inserted the words "or incorporate" in (a) (3).

§ 29-907. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in the District of Columbia whose business office is identical with such registered office, or a corporation authorized by the articles of incorporation to act as such agent and authorized to transact business in the District of Columbia having a business office identical with such registered office. (June 8, 1954, 68 Stat. 183, ch. 269, § 10, effective Dec. 5, 1954.)

NOTES TO DECISIONS

PLACE OF BUSINESS

Under Business Corporation Act of District of Columbia requiring a corporation to have and continuously maintain in district a registered office which may be but need not be the same as its place of business and a registered agent, Congress intended only that the registered office and registered agent remain in District and did not require that they be at place of business which would imply, so far as events after organization are concerned, that the place of business might be elsewhere than the District. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-907a. Change of registered office or registered agent.

(a) A corporation may change its registered office or change its registered agent, or both, by filing with the Commissioners a statement setting forth—

- (1) the name of the corporation;
- (2) the address, including street and number, if any, of its then registered office;
- (3) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed, the name of its successor registered agent;
- (6) that the address of its registered office and the address of the business office of its registered agent as changed, will be identical; and
- (7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to the provisions of this chapter, they shall:

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in their office;
- (3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice

thereof, executed in triplicate, with the Commissioners, who shall forthwith mail one copy thereof to the corporation at its registered office and another copy thereof to the corporation at its principal office in the District as shown on the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (June 8, 1954, 68 Stat. 184, ch. 269, § 11, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 3, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 239, Pub. L. 86-106, § 1.)

AMENDMENTS

1959—Section 1 of the act of July 23, 1959, amended the section by adding subsection (d) thereto.

1957—Act of September 2, 1957, cited to text, amended subsection (b) by inserting the words "in duplicate" after "executed". Struck out "file such statement" at end of subsection (b) and inserted new matter numbered (1), (2) and (3).

EFFECTIVE DATE OF 1959 AMENDMENT

1959—Section 18, of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-907b. Registered agent as an agent for service.

(a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) In the event a corporation shall fail to appoint or maintain a registered agent, then the Commissioners are hereby irrevocably appointed as an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Commissioners shall be returnable in not less than thirty days.

(c) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 184, ch. 269, § 12, effective Dec. 5, 1954.)

§ 29-908. Authorized shares.

(a) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

(b) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes—

(1) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) entitling the holders thereof to cumulative or noncumulative dividends;

(3) having preference over any other class or classes of shares as to the payment of dividends;

(4) having preference as to the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(5) convertible into shares of any other class: *Provided*, That shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted. (June 8, 1954, 68 Stat. 185, ch. 269, § 13, effective Dec. 5, 1954.)

§ 29-908a. Issuance of shares of preferred or special classes in series.

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation: *Provided*, That all shares of the same class shall be identical except as to the following relative rights and preferences, in respect of any or all of which there may be variations between different series:

(1) The rate of dividend, the time of payment and the dates from which dividends on cumulative shares shall be accumulative, and the extent of other participation rights, if any

(2) The price at and the terms and conditions on which shares may be redeemed.

(3) The amount payable upon shares in event of involuntary liquidation

(4) The amount payable upon shares in event of voluntary liquidation.

(5) Sinking-fund provisions for the redemption or purchase of shares.

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(7) Any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section, fix and determine the relative rights and preferences of the shares of any series so established: *Provided*, That such authority of the board of directors shall be subject to such further limitations, if any, as are stated in the articles of incorporation and shall always be subject to the limitation that the board of directors shall not create a sinking fund in respect of any series unless provision for a sinking fund at least as beneficial to all issued and outstanding shares of the same class shall either then exist or be at the same time created.

(c) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file with the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) a copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(3) the date of adoption of such resolution;

(4) that such resolution was duly adopted by the board of directors.

(e) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all franchise taxes, fees, and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(f) Upon the filing of such statement by the Commissioners, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective. (June 8, 1954, 68 Stat. 185, ch. 269, § 14, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 4, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 2.)

AMENDMENTS

1959—Section 2 of the act of July 23, 1959, cited to text, amended subsection (a) as follows:

(1) At end of clause 1, changed the period to a comma and added the matter starting with "the time of".

(2) Added clause (7) thereto.

1957—Act of September 2, 1957, changed the period at end of subsection (e) (2) to a semicolon and added the matter designated as (e) (3). It also struck out former subsection (f) and changed subsection (g) to (f).

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides:

This Act shall take effect on the sixtieth day after the date of its enactment

§ 29-908b. Subscriptions for shares.

(a) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(b) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of the shares, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. Such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with the postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. (June 8, 1954, 68 Stat. 186, ch. 269, § 15, effective Dec. 5, 1954.)

§ 29-908c. Consideration for shares.

(a) Shares having a par value may be issued for such consideration, not less than the par value

thereof, as shall be fixed from time to time by the board of directors.

(b) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

(c) Shares of a corporation issued and thereafter acquired by it may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(e) In the event of an exchange of issued shares having a par value for a different number of shares having the same aggregate par value, whether of the same or of a different class or classes, or in the event of a conversion of shares, or in the event of an exchange of shares with or without par value into the same or a different number of shares without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange shall be deemed to be (1) the consideration originally received for the shares so exchanged or converted; and (2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and (3) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted. (June 8, 1954, 68 Stat. 187, ch. 269, § 16, effective Dec. 5, 1954.)

§ 29-908d. Payment for shares.

(a) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued, which, in the case of shares having a par value, shall be not less than the par value thereof, shall have been received by the corporation, such shares shall be deemed to be full paid and non-assessable.

(b) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(c) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. (June 8, 1954, 68 Stat. 187, ch. 269, § 17, effective Dec. 5, 1954.)

§ 29-908e. Determination of stated capital.

(a) A corporation may determine that only a part of the consideration for which its shares may be

issued, from time to time, shall be stated capital: *Provided*, That in the event of any such determination—

(1) if the shares issued shall consist wholly of shares having a par value, then the stated capital represented by such shares shall be not less than the aggregate par value of the shares so issued;

(2) if the shares issued shall consist wholly of shares without par value, all of which shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be not less than the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(3) if the shares issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus;

(4) if the shares issued shall consist of several or all of the classes of shares enumerated in (1), (2), and (3) of this section, then the stated capital represented by such shares shall be not less than the aggregate par value of any shares so issued having a par value and the aggregate preferential amount payable upon any shares so issued without par value having a preferential right in the event of involuntary liquidation.

(b) In order to determine that only a part of the consideration for which shares without par value may be issued from time to time shall be stated capital, the board of directors shall adopt a resolution setting forth the part of such consideration allocated to stated capital and the part otherwise allocated, and expressing such allocation in dollars. If the board of directors shall not have determined (a) at the time of the issuance of any shares issued for cash, or (b) within sixty days after the issuance of any shares issued for labor or services actually performed for the corporation or issued for property other than cash, that only a part of the consideration for shares so issued shall be stated capital, then the stated capital of the corporation represented by such shares shall be an amount equal to the aggregate par value of all such shares having a par value, plus the consideration received for all such shares without par value.

(c) The stated capital of the corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the paid-in or other surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. (June 8, 1954, 68 Stat. 188, ch. 269, § 18, effective Dec. 5, 1954.)

§ 29-908f. Expenses of organization, reorganization, and financing.

The reasonable charges and expenses of organization or reorganization of a corporation and reason-

able compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not full paid and nonassessable. (June 8, 1954, 68 Stat. 188, ch. 269, § 19, effective Dec. 5, 1954.)

§ 29-908g. Certificates representing shares.

(a) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary and sealed with the seal of the corporation. Such seal may be a facsimile. Where such a certificate is countersigned by a transfer agent other than the corporation itself or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice president and the secretary or assistant secretary upon such certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

(b) Notwithstanding the provisions of section 28-2915, every certificate representing shares the transferability of which is restricted or limited shall state upon the face thereof that the transferability of such shares is restricted or limited and upon the face or back thereof shall either set forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement.

(c) Subject to the provisions of subsection (b) of this section, every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back thereof, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(d) Each certificate representing shares shall also state—

(1) that the corporation is organized under the laws of the District of Columbia;

(2) the name of the person to whom issued;

(3) the number and class of shares which such certificate represents;

(4) the par value of each share represented by such certificate, or a statement that the shares are without par value.

(e) No certificate shall be issued for any share until such share is fully paid.

(f) As to corporations availing themselves of the provisions of section 29-952, the provisions of this section shall be applicable only to the shares of such corporations issued subsequent to such reincorporation or incorporation. (June 8, 1954, 68 Stat. 189, ch. 269, § 20, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 5, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 3.)

AMENDMENTS

1959—Section 3 of the act of July 23, 1959, amended subsections (b) and (c) to read as above set out.

1957—Act of September 2, 1957, cited to text, added subsection (f).

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-908h. Issuance of fractional shares or scrip.

A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip or other evidence of ownership, which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or other evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to exercise any voting right, or to receive dividends thereon or to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip or evidence of ownership to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip or evidence of ownership is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or evidence of ownership, or subject to any other conditions which the board of directors may deem advisable. (June 8, 1954, 68 Stat. 189, ch. 269, § 21, effective Dec. 5, 1954.)

§ 29-908i. Liability of subscribers and shareholders.

(a) A holder of or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(b) No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares

as collateral security shall be personally liable as a shareholder.

(c) Where it cannot be determined that shares which have been issued and outstanding for more than twelve years are fully paid and nonassessable, a determination by the board of directors that the net assets of a corporation applicable to such shares have a fair value at least equal to the stated capital represented by such shares, shall, in the absence of fraud, have the same effect as if such shares had been issued in consideration of such net assets upon such a determination made at the time of issuance, except that no such determination shall affect any rights of any then existing creditors. (June 8, 1954, 68 Stat. 190, ch. 269, § 22, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 4.)

AMENDMENT

1959—Section 4 of the act of July 23, 1959, amended the section by adding subsection (c) thereto.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-908j. Shareholders' preemptive rights.

(a) The preemptive right of a shareholder to acquire additional shares of a corporation may be limited or denied to the extent provided in the articles of incorporation.

(b) Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its shares to its employees or to the employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be approved by the holders of two-thirds of its shares entitled to vote or by its board of directors pursuant to like approval of the shareholders. (June 8, 1954, 68 Stat. 190, ch. 269, § 23, effective Dec. 5, 1954.)

§ 29-909. Bylaws.

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. (June 8, 1954, 68 Stat. 190, ch. 269, § 24, effective Dec. 5, 1954.)

§ 29-910. Meetings of shareholders.

(a) Meetings of shareholders may be held at such place within or without the District of Columbia as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of

all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 190, ch. 269, § 25, effective Dec. 5, 1954.)

§ 29-910a. Notice of shareholders' meetings.

Except as provided in section 29-945 hereof, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. (June 8, 1954, 68 Stat. 190, ch. 269, § 26, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 6, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 5.)

AMENDMENTS

1959—Section 5 of the act of July 23, 1959, amended the first paragraph by inserting after the words "meeting is called, shall" the words, "in the absence of a provision in the bylaws specifying a different period of notice."

1957—Act of September 2, 1957, cited to text, amended the first sentence to read as above set out.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-911. Voting of shares.

(a) Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

(b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

(d) The articles of incorporation may provide that in all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or to distribute such votes on the same principle among any number of such candidates. (June 8, 1954, 68 Stat. 191, ch. 269, § 27, effective Dec. 5, 1954.)

§ 29-912. Closing of transfer books and fixing record date.

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock-transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock-transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock-transfer books, the board of directors may fix in advance a date as the record date for any determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock-transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. (June 8, 1954, 68 Stat. 191, ch. 269, § 28, effective Dec. 5, 1954.)

§ 29-913. Voting of shares by certain holders.

(a) Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares

held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver or trustee in bankruptcy was appointed.

(d) Except as otherwise provided in section 29-911, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Shares standing in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(f) Shares standing in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy unless a different apportionment of the vote is requested by such tenants. (June 8, 1954, 68 Stat. 192, ch. 269, § 29, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 6.)

AMENDMENT

1959—Section 6 of the act of July 23, 1959, amended the section as follows:

(1) Added the last sentence to subsection (a) as above set out.

(2) Added subsections (e) and (f).

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-914. Voting trust.

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting-trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as is the record of shareholders of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose. The trustee or trustees may execute and deliver to

the transferors voting-trust certificates which shall be transferable in the same manner and with the same effect as certificates representing shares. (June 8, 1954, 68 Stat. 192, ch. 269, § 30, effective Dec. 5, 1954.)

§ 29-915. Quorum of shareholders.

(a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders: *Provided*, That in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

(b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may have been transacted at the meeting as originally called.

(d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter or the articles of incorporation, and except that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. (June 8, 1954, 68 Stat. 191, ch. 269, § 31, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 7.)

AMENDMENTS

1959—Section 7 of the act of July 23, 1959, amended the section by adding subsection (d) thereto.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-916. Board of directors.

The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so provide. The articles of incorporation or bylaws may prescribe other qualifications for directors. (June 8, 1954, 68 Stat. 193, ch. 269, § 32, effective Dec. 5, 1954.)

§ 29-916a. Number and election of directors.

The number of directors of a corporation shall not be less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated

in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, or until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. (June 8, 1954, 68 Stat. 193, ch. 269, § 33, effective Dec. 5, 1954.)

§ 29-916b. Classification of directors.

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. (June 8, 1954, 68 Stat. 193, ch. 269, § 34, effective Dec. 5, 1954.)

§ 29-916c. Vacancies.

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. (June 8, 1954, 68 Stat. 193, ch. 269, § 35, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 8.)

AMENDMENTS

1959—Section 8 of the act of July 23, 1959, amended the section by striking out at the end of the second sentence the words "by the board of directors" and inserting in lieu thereof the phrase beginning with "by affirmative" and ending with "provide"

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-916d. Quorum of directors.

A majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors, then of the number stated in the

articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 193, ch. 269, § 36, effective Dec. 5, 1954.)

§ 29-916e. Executive committee.

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law. (June 8, 1954, 68 Stat. 194, ch. 269, § 37, effective Dec. 5, 1954.)

§ 29-916f. Place of directors' meetings.

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia as may be provided in the bylaws or by resolution adopted by a majority of the board of directors. (June 8, 1954, 68 Stat. 174, ch. 269, § 38, effective Dec. 5, 1954.)

§ 29-916g. Notice of directors' meetings.

Except as provided in section 29-945 hereof, meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. (June 8, 1954, 68 Stat. 194, ch. 269, § 39, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 7, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, amended the first sentence to read as above set out.

§ 29-917. Dividends.

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

(a) No dividend shall be declared or paid at a time when the corporation is insolvent or its net

assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital.

(b) Dividends may be paid out of paid-in surplus or surplus arising from the surrender to the corporation of any of its shares only upon shares having a preferential right to receive dividends, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this subparagraph shall not limit nor be deemed to conflict with the provisions of this chapter in respect of the distribution of assets as a liquidating dividend.

(c) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(d) If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof.

(e) A split up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section.

(f) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

(g) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation and may pay dividends from the net profits so determined by the directors. (June 8, 1954, 68 Stat. 194, ch. 269, § 40, effective Dec. 5, 1954.)

§ 29-917a. Dividends in partial liquidation.

A corporation, from time to time, may distribute a portion of its assets, in cash or kind, to its shareholders as a liquidating dividend, in the following manner and subject to the following restrictions:

(a) The board of directors shall adopt a resolution recommending the payment of a liquidating dividend, specifying the class or classes of shareholders entitled thereto and the amount thereof, and directing that the question of such distribution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the question of such distribution shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of such meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken by classes on the question of the proposed distribution. The affirmative vote of the holders of at least two-thirds of the outstanding shares of each class shall be required for the authorization of such distribution.

(d) No such distribution shall be made at a time when the corporation is insolvent or its net assets are less than its stated capital, or when such distribution would render the corporation insolvent or reduce its net assets below its stated capital.

(e) No such distribution shall be made to any class of shareholders unless all cumulative dividends accrued on preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(f) No such distribution shall be made to any class of shareholders which will reduce the remaining net assets below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(g) Each such distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. (June 8, 1954, 68 Stat. 195, ch. 269, § 41, effective Dec. 5, 1954.)

§ 29-918. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a corporation—

(1) directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation;

(2) the directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of assets of a corporation to its shareholders which renders the corporation insolvent or reduces its net assets below its stated capital shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that the corporation is thereby rendered

insolvent or its net assets are reduced below its stated capital;

(3) the directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without an adequate provision for, or the payment and discharge of, all debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged;

(4) the directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(c) A director shall not be liable under either subparagraph (1) or (2) of this section if he relied and acted in good faith upon a balance sheet and profit-and-loss statement of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or certified by or otherwise represented in a written report of an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(d) Any director against whom a claim shall be asserted under or pursuant to this section, and who shall be held liable thereon, shall be entitled to contribution from the other directors who are likewise liable thereon.

(e) Any director against whom a claim shall be asserted under or pursuant to this section for the improper declaration of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who knowingly accepted or received any such dividend or assets, in proportion to the amounts received by them, respectively.

(f) No suit shall be brought against any director for any liability imposed by this chapter except within three years after the right of action shall accrue. (June 8, 1954, 68 Stat. 196, ch. 269, § 42, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 9.)

AMENDMENTS

1959—Section 9 of the act of July 23, 1959, amended the section as follows:

(1) In subsection (c) inserted the phrase "or otherwise represented in a written report of" to follow the words "certified by".

(2) Added subsection (f) thereto.

EFFECTIVE DATE

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-919. Officers.

(a) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (June 8, 1954, 68 Stat. 197, ch. 269, § 43, effective Dec. 5, 1954.)

§ 29-919a. Removal of officers.

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. (June 8, 1954, 68 Stat. 197, ch. 269, § 44, effective Dec. 5, 1954.)

§ 29-920. Books and records.

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Any person or persons who shall be the holder or holders of record of at least 5 per centum of all the outstanding shares of a corporation shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its record of shareholders and to make extracts therefrom.

(c) A holder of a voting-trust certificate evidencing an interest in a voting trust conforming to the provisions of this chapter shall have the same rights

as a shareholder to examine and make extracts from the record of shareholders of the corporation.

(d) If any person or persons holding in the aggregate 5 per centum or more of all of the outstanding shares of a corporation shall present to any officer, director, or registered agent of the corporation a written request stating the purpose thereof, for a statement of its affairs, it shall be his duty to make or procure such a statement sworn to by the president or a vice president or by the treasurer or an assistant treasurer, embracing a particular account of its assets and liabilities in detail, and to have the same ready and on file at the registered office of the corporation within thirty days after the presentation of such request. Such statement shall at all times during business hours be open to the inspection of any shareholder and he shall be entitled to copy the same.

(e) Any corporation whose officers or agents shall refuse to allow any such shareholder, entitled under the provisions of this section to examine the record of shareholders, or his agent or attorney, so to examine and make extracts from its record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of \$50, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the record of shareholders of such corporation or any other corporation.

(f) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation. (June 8, 1954, 68 Stat. 197, ch. 269, § 45, effective Dec. 5, 1954.)

AMENDMENTS

1959—Section 10 of the act of July 23, 1959, amended the section by inserting in subsection (d) after the words "written request" the words "stating the purpose thereof,".

EFFECTIVE DATE

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

NOTES TO DECISIONS

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-921. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and filing in duplicate in the office of the Commissioners articles of incorporation for such corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46, effective Dec. 5, 1954.)

§ 29-921a. Articles of incorporation.

The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual.
- (c) The purpose or purposes for which the corporation is organized.
- (d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.
- (e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting power, limitations, restrictions, qualifications, and the special or relative rights in respect of the shares of each class.
- (f) A statement that the minimum amount of capital with which the corporation shall commence business shall be not less than \$1,000.
- (g) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between different series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(i) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws.

(j) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address.

(k) The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

(l) The name and address, including street and number, if any, of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. Whenever a provision

of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. (June 8, 1954, 68 Stat. 198, ch. 269, § 47, effective Dec. 5, 1954.)

NOTES TO DECISIONS

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PRINCIPAL PLACE OF BUSINESS

The provision of Business Corporation Act of District of Columbia providing that each corporation "shall keep at each registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders" contemplated that principal place of business might also be outside the District after organization. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-921b. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioners. If the Commissioners find that the articles of incorporation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of incorporation to which they shall affix the other duplicate original.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Commissioners, shall be delivered to the incorporators or their representatives. (June 8, 1954, 68 Stat. 199, ch. 269, § 48, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 8, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the provisions in subsection (b) for the recording by the Commissioners of the certificate and substituted the new language above set out.

DESTRUCTION OF DUPLICATE CORPORATE PAPERS

Section 17 (§ 150) of the act of July 23, 1959, Pub. L. 86-106, provides as follows.

The Recorder of Deeds, after publishing notice of his intention so to do, is authorized, one hundred and eighty days after the effective date of this section, to destroy all duplicate original corporation papers filed in his office pursuant to this chapter prior to October 2, 1957. Such notice shall describe in general terms each class of papers affected, and shall be published once a week for three consecutive weeks in a newspaper of general circulation in the District of Columbia, the third publication of such notice to appear not less than thirty days prior to the date after which such papers may be destroyed. Any corporation shall be entitled to the return to it of any paper authorized by this section to be destroyed upon written request to the Recorder of Deeds accompanied by a fee in the amount of \$1 for each such paper to cover the cost of postage and handling.

§ 29-921c. Effect of issuance of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (June 8, 1954, 68 Stat. 199, ch. 269, § 49, effective Dec. 5, 1954.)

§ 29-921d. Requirement before commencing business.

A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until at least the minimum amount of capital set forth in its articles of incorporation as the minimum amount of capital with which it will commence business has been fully paid in. (June 8, 1954, 68 Stat. 199, ch. 269, § 50, effective Dec. 5, 1954.)

§ 29-921e. Organization meeting of directors.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the shareholders, in which event the bylaws shall be adopted by the shareholders), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting: *Provided, however,* That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting. (June 8, 1954, 68 Stat. 199, ch. 269, § 51, effective Dec. 5, 1954.)

§ 29-921f. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided,* That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge, or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(f) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designations of all or any part of its shares, whether issued or unissued, and to change the preferences, voting power, qualifications, limitations, restrictions, and the special or relative rights in respect of all or any part of its shares, whether issued or unissued.

(h) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(i) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(j) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(k) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(l) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(m) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(n) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(o) To limit, deny, or grant to shareholders of any class the preemptive right to subscribe for or acquire additional shares of the corporation, whether then or thereafter authorized. (June 8, 1954, 68 Stat. 200, ch. 269, § 52, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 9, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, changed the word "share" to "shares" in subsection (m).

§ 29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

(a) Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation, verified and filed in duplicate with the Commissioners. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation.

(b) Such amended articles of incorporation shall be delivered in duplicate original to the Commissioners. If the Commissioners find that such amended articles of incorporation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue an amended certificate of incorporation, to which they shall affix the other duplicate original.

(c) The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative.

(d) Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation. (June 8, 1954, 68 Stat. 201, ch. 269, § 53, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 10, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, made the following amendments to the section:

(1) In subsection (a) struck out "Amendments to the" in the first line and changed it to "Amended";

(2) In the same subsection changed "by the Commissioners", to read "with the Commissioners".

(3) Struck out the old language under (b) (3) and inserted the new matter as above set out.

(4) Struck out the old language in subsection (c) and inserted the new language above set out and added subsection (d).

§ 29-921h. Procedure to amend articles of incorporation after acceptance of subscription to shares.

Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote at such meeting

within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless any class of shares is entitled to vote as a class in respect thereof, as hereinafter provided, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote.

(d) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting. (June 8, 1954, 68 Stat. 201, ch. 269, § 54, effective Dec. 5, 1954.)

§ 29-922. When entitled to vote by classes.

The holders of the outstanding shares of a class whether by the provisions of the articles of incorporation such class of stock is entitled to vote or not shall be entitled to vote as a class upon a proposed amendment which would—

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations, voting, or relative rights of the shares of such class.

(f) Change the shares of such class having a par value into the same or a different number of shares without par value, or change the shares of such class without par value into the same or a different number of shares having a par value.

(g) Change the shares of such class, whether with or without par value, into a different number of shares of the same class, or into the same or a different number of shares, either with or without par value, of other classes.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(i) Create a new class of shares having rights and preferences prior and superior to the shares of such class.

(j) Limit or deny the existing preemptive rights of the shares of such class. (June 8, 1954, 68 Stat. 202, ch. 269, § 55, effective Dec. 5, 1954.)

§ 29-923. Articles of amendment.

(a) The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation;

(2) the amendment so adopted;

(3) the date of the adoption of the amendment by the shareholders;

(4) the number of shares outstanding, and the number of shares entitled to vote, and if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote;

(5) the number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) if such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus as changed by such amendment.

(b) If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of (1) the amount of stated capital represented by such shares without par value, and (2) the amount of surplus, if any, transferred to stated capital on account of such change, and (3) any additional consideration paid for such shares with par value and allocated to stated capital. (June 8, 1954, 68 Stat. 202, ch. 269, § 56, effective Dec. 5, 1954.)

§ 29-923a. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioners. If the Commissioners find that the articles of amendment conform to law, they shall, when all fees and taxes have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of amendment to which they shall affix the other duplicate original.

(b) The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 203, ch. 269, § 57, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 11, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the recording provision in (b) and substituted the new language above set out.

§ 29-923b. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (June 8, 1954, 68 Stat. 203, ch. 269, § 58, effective Dec. 5, 1954.)

§ 29-924. Redemption and cancellation of shares.

(a) If the articles of incorporation provide that redeemable shares redeemed, or purchased or otherwise acquired by the corporation, shall be canceled and shall not be reissued, then, in the event of such cancellation of shares, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(b) No redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution.

(c) When redeemable shares of a corporation have been canceled pursuant to the provisions of the articles of incorporation, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

(1) the name of the corporation;

(2) the aggregate number of shares which the corporation had authority to issue, itemized by classes and series;

(3) the number of shares canceled, itemized by classes and series;

(4) the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation;

(5) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to the cancellation;

(6) a statement, expressed in dollars, of the amount of the stated capital and the amount of paid-in surplus of the corporation after giving effect to such cancellation.

(d) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(e) The filing of such statement by the Commissioners shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(f) Nothing contained in this section shall be construed to forbid a reduction of authorized shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 203, ch. 269, § 59, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 12, effective October 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, added the matter designated as (d) (3); struck former subsection (e) and redesignated (f) and (g) as (e) and (f).

§ 29-924b. Cancellation of reacquired shares.

(a) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it through redemption, purchase, or otherwise, and in the event of such cancellation a statement of cancellation shall be filed as provided in this section. When any reacquired shares have been canceled by resolution of the board of directors, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or assistant secretary, which statement shall set forth—

(1) the name of the corporation;

(2) the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(3) the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class before giving effect to such cancellation;

(4) the number of shares canceled, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(5) a statement that the shares so canceled were canceled by a resolution duly adopted by the board of directors;

(6) the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to such cancellation;

(7) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation before giving effect to such cancellation;

(8) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation after giving effect to such cancellation.

(b) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) Upon the filing of such statement by the Commissioners, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled and the shares so canceled shall be deemed to be authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 204, ch. 269, § 60, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 13, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out (b) (3) relating to recording of duplicate originals and inserted the new matter therein set out.

§ 29-925. Reduction of stated capital in certain cases.

(a) The reduction of the stated capital of a corporation where such reduction is not accompanied by an exchange, reclassification, or cancellation of shares, or by a reduction in the par value of issued shares, or by a reduction of the number of authorized shares of any class below the number of issued shares of that class, or by a redemption and cancellation of shares, may be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote shall be taken on the question of the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote.

(b) When a reduction of the stated capital of a corporation has been approved as provided in this

section, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

(1) the name of the corporation;

(2) a copy of the resolution of the shareholders approving such reduction;

(3) the total number of shares outstanding and the number of shares entitled to vote;

(4) the number of shares voted for and against such reduction, respectively;

(5) a statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus of the corporation adjusted to give effect to such reduction.

(c) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 205, ch. 269, § 61, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 14, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out recording provisions in (c) (3) and substituted new matter therein set out.

§ 29-925a. Reduction of stated capital—Limits—Paid-in surplus.

(a) No reduction of stated capital shall be made under the provisions of section 29-925 which would reduce the amount of the aggregate stated capital of the corporation to an amount less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value, after such reduction, of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

(b) The surplus, if any, created by or arising out of the reduction of the stated capital of a corporation shall be deemed to be paid-in surplus, except where such reduction is effected by the cancellation of its own shares belonging to the corporation, or by the redemption and cancellation of shares, in either of which events the paid-in surplus, if any, created by such reduction shall not exceed the amount by which the stated capital represented by such shares exceeded the cost thereof to the corporation. (June 8, 1954, 68 Stat. 206, ch. 269, § 62, effective Dec. 5, 1954.)

§ 29-926. Reduction of paid-in surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its paid-in surplus

to the payment of dividends as permitted by section 29-917, or to the distribution of liquidating dividends as permitted by section 29-917a, to the payment of reasonable compensation for the sale or underwriting of its shares as permitted by section 29-908f, the reduction or elimination of any deficit arising from operating or other losses or from diminution in value of its assets. (June 8, 1954, 68 Stat. 206, ch. 269, § 63, effective Dec. 5, 1954.)

§ 29-927. Procedure for merger.

Any two or more domestic corporations may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 206, ch. 269, § 64, effective Dec. 5, 1954.)

§ 29-927a. Procedure for consolidation.

Any two or more domestic corporations may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 207, ch. 269, § 65, effective Dec. 5, 1954.)

§ 29-927b. Meetings of shareholders.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be

submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. (June 8, 1954, 68 Stat. 207, ch. 269, § 66, effective Dec. 5, 1954.)

§ 29-927c. Approval by shareholders.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares of each corporation unless as to any of such corporations two or more classes of shares are issued in which event as to such corporation or corporations the plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the outstanding shares of each such class. (June 8, 1954, 68 Stat. 207, ch. 267, § 67, effective Dec. 5, 1954.)

§ 29-927d. Articles of merger or consolidation.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by him, and the corporate seal of each corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, the number of shares outstanding, and if there are two or more classes of shares issued, the designation of each such class and the number of shares thereof outstanding;

(3) as to each corporation, the number of shares voted for and against such plan respectively, and, if there are two or more classes of shares issued the number of shares of each such class voted for and against such plan, respectively.

(b) Such articles of merger or consolidation shall be delivered to the Commissioners. If the Commissioners find that such articles of merger or consolidation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger or certificate of consolidation to which they shall attach the other duplicate original.

(c) The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be delivered to the surviving or new corporation, as the case may be, or its representative. (June 8, 1954, 68 Stat. 207, ch. 269,

§ 68, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 15, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the recording provisions in (c) and inserted the new matter therein set out.

§ 29-927e. Effective date of merger or consolidation.

Upon the issuance of the certificate of merger or the certificate of consolidation by the Commissioners, the merger or consolidation shall be effected. (June 8, 1954, 68 Stat. 208, ch. 269, § 69, effective Dec. 5, 1954.)

§ 29-927f. Effect of merger or consolidation.

When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolida-

tion, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(g) The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. (June 8, 1954, 68 Stat. 208, ch. 269, § 70, effective Dec. 5, 1954.)

§ 29-927g. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in the District of Columbia, and in every case it shall file with the Commissioners—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

(June 8, 1954, 68 Stat. 209, ch. 269, § 71, effective Dec. 5, 1954.)

§ 29-927h. Merger of parent corporation and wholly owned subsidiary.

(a) Any corporation now or hereafter organized under the provisions hereof or existing under the laws of the District of Columbia, for the purpose of carrying on any kind of business authorized by this chapter, owning all of the stock of any other corporation now or hereafter organized hereunder or existing under the laws of the District of Columbia, or now or hereafter organized under the laws of any other State of the United States of America, if the laws under which said other corporation is formed shall permit a merger as herein provided, may file, in duplicate original with the Commissioners, a certificate of such ownership in its name and under its corporate seal, signed by its president or a vice president, and its secretary or assistant secretary, and setting forth a copy of the resolution of its board of directors to merge such other corporation, and to assume all of its obligations and the date of the adoption thereof. If the Commissioners find that such certificate of ownership conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger to which they shall affix the other duplicate original.

(b) The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative.

(c) Upon the issuance of the certificate of merger, the merger shall be effected and thereupon all of the estate, property, rights, privileges, and franchises of such other corporation shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such parent corporation, and except as herein-after in this section provided, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege, or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law or laws by or pursuant to which such parent corporation is organized, or operates in the District of Columbia. The parent corporation shall be deemed to have assumed all of the obligations and liabilities of the merged corporation and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The parent corporation may relinquish its corporate name and assume in lieu thereof the name of the merged corporation, by including it in a provision to that effect in the resolution of merger adopted by the directors and set forth in the certificate of ownership, and

upon the filing of such certificate the change of name shall be completed, with the same force and effect and subject to the same conditions and consequences as if such change had been accomplished by proceedings under the appropriate section of this chapter. (June 8, 1954, 68 Stat. 210, ch. 269, § 72, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 16, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck "ownership" in (a) (3) and inserted "merger". In subsection (b) struck out the recording provisions and inserted the new language above set out. In subsection (c) struck out "ownership" in the first line and substituted "merger".

§ 29-927i. Rights of dissenting shareholders.

(a) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be bound by the terms of the merger or consolidation.

(b) If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(c) If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the District of Columbia, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of 5 per centum per annum to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing

said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(d) The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation. (June 8, 1954, 68 Stat. 210, ch. 269, § 73, effective Dec. 5, 1954.)

NOTES TO DECISIONS

STOCKHOLDER'S SUIT

Under statute authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholders' shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

§ 29-928. Sale, lease, exchange, or mortgage of assets in usual and regular course of business.

The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. (June 8, 1954, 68 Stat. 211, ch. 269, § 74, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 17, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the words "less than" in two places.

§ 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each shareholder of record entitled to vote within the time and in the manner provided by this chapter for the giving of notice of meetings of shareholders.

(c) At such meetings the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless there are two or more classes of stock issued and outstanding and entitled to vote, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such class of shares issued and outstanding and entitled to vote.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. (June 8, 1954, 68 Stat. 211, ch. 269, § 75, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 18, effective October 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, added the new matter after the word "corporation" beginning with "if not" and ending with "business" in the first paragraph of the section.

§ 29-930. Voluntary dissolution of corporation by its incorporators.

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within one year from the date of the issuance of its certificate of incorporation in the following manner:

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth—

- (1) the name of the corporation;
- (2) the date of issuance of its certificate of incorporation;
- (3) that none of its shares have been issued;
- (4) that the corporation has not commenced business;

(5) that the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(6) that no debts of the corporation remain unpaid;

(7) that all the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the Commissioners. If the Commissioners find that the articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution to which they shall affix the other duplicate original.

(c) The certificate of dissolution, together with the duplicate original affixed thereto, shall be delivered to the incorporators or their representatives.

(d) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 212, ch. 269, § 76, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 19, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out recording provisions in (c) and inserted the new matter above set out.

§ 29-930a. Dissolution by consent of shareholders.

A corporation may be dissolved by the written consent of the holders of record of all of its outstanding shares in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

(a) The name of the corporation.

(b) The names and respective addresses, including street and number, if any, of its officers.

(c) The names and respective addresses, including street and number, if any, of its directors.

(d) A copy of the agreement signed by all shareholders of record of the corporation consenting to its dissolution.

(e) A statement that such agreement has been signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 213, ch. 269, § 77, effective Dec. 5, 1954.)

§ 29-930b. Dissolution by act of corporation.

A corporation may be dissolved by the act of the corporation in the following manner:

(a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

(1) the name of the corporation;

(2) the names and respective addresses, including street and number, if any, of its officers;

(3) the names and respective addresses, including street and number, if any, of its directors;

(4) a copy of the resolution of the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding and entitled to vote;

(6) the number of shares voted for and against the dissolution of the corporation. (June 8, 1954, 68 Stat. 213, ch. 269, § 78, effective Dec. 5, 1954.)

§ 29-930c. Filing of statement of intent to dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in their office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 213, ch. 269, § 79, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 20, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the recording provisions in (c) and added the new matter therein set out.

§ 29-930d. Effect of statement of intent to dissolve.

Upon the filing by the Commissioners of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the proper winding up thereof. (June 8, 1954, 68 Stat. 214, ch. 269, § 80, effective Dec. 5, 1954.)

§ 29-930e. Proceedings after filing of statement of intent to dissolve.

After the filing by the Commissioners of a statement of intent to dissolve—

(a) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(b) The corporation, at any time during the liquidation of its business and affairs, may make application to the United States District Court for the District of Columbia to have the liquidation continued under the supervision of the court as provided in this chapter. (June 8, 1954, 68 Stat. 214, ch. 269, § 81, effective Dec. 5, 1954.)

§ 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.

By the written consent of the holders of record of all of its outstanding shares, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

- (a) The name of the corporation.
- (b) The names and respective addresses, including street and number, if any, of its officers.
- (c) The names and respective addresses, including street and number, if any, of its directors.
- (d) A copy of the agreement signed by all shareholders of record of the corporation revoking such voluntary dissolution proceedings.

(e) That such agreement is signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 214, ch. 269, § 82, effective Dec. 5, 1954.)

§ 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of shareholders.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is

to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

- (1) the name of the corporation;
- (2) the names and respective addresses, including street and number, if any, of its officers;
- (3) the names and respective addresses, including street and number, if any, of its directors;
- (4) a copy of the resolution of the shareholders revoking the voluntary dissolution proceedings;
- (5) the number of shares outstanding and entitled to vote;
- (6) the number of shares voted for and against the revocation of the voluntary dissolution proceedings, respectively. (June 8, 1954, 68 Stat. 215, ch. 269, § 83, effective Dec. 5, 1954.)

§ 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in their office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 215, ch. 269, § 84, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 21, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the recording provisions in (c) and substituted the new matter therein set out.

§ 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.

Upon the filing by the Commissioners of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may thereupon again carry on its business. (June 8, 1954, 68 Stat. 215, ch. 269, § 85, effective Dec. 5, 1954.)

§ 29-930j. Articles of dissolution.

When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary which shall set forth—

(a) The name of the corporation.

(b) That the corporation has theretofore filed with the Commissioners a statement of intent to dissolve, and the date on which such statement was filed.

(c) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

(e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit. (June 8, 1954, 68 Stat. 216, ch. 269, § 86, effective Dec. 5, 1954.)

§ 29-930k. Filing articles of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioners. If the Commissioners find that such articles of dissolution conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution, to which they shall affix the other duplicate original.

(b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter. (June 8, 1954, 68 Stat. 216, ch. 269, § 87, effective Dec. 5, 1954, Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 22, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out in (b) the recording provision and added the new matter therein set out.

§ 29-931. Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of a court of equity in an action instituted by the Commissioners in the name of the District of Columbia, when it is made to appear to the court that—

(a) The franchise of the corporation was procured through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(c) The corporation has failed for thirty days to appoint and maintain a registered agent as provided in this chapter; or

(d) The corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioners a statement of such change. (June 8, 1954, 68 Stat. 216, ch. 269, § 88, effective Dec. 5, 1954.)

NOTES TO DECISIONS**PLACE OF BUSINESS AFTER ORGANIZATION**

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-931a. Venue and process.

Every action for the involuntary dissolution of a corporation on the grounds hereinbefore provided shall be commenced by the Commissioners in the United States District Court for the District of Columbia. Summons shall issue and shall be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioners shall cause a copy of such notice to be mailed by registered mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for three successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it. (June 8, 1954, 68 Stat. 217, ch. 269, § 89, effective Dec. 5, 1954.)

§ 29-931b. Jurisdiction of court to liquidate assets and business of corporation.

(a) The United States District Court for the District of Columbia shall have full power to liquidate the assets and business of a corporation—

(1) upon application by a corporation which has filed a statement of intent to dissolve, as provided

in this chapter, to have its liquidation continued under the supervision of the court;

(2) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

(3) in an action by a shareholder when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(4) in an action by a shareholder when it is established that the shareholders are deadlocked in voting power and for that reason have been unable at two consecutive annual meetings to elect successors to directors whose terms had expired.

(b) Proceedings under this section shall be brought in the United States District Court for the District of Columbia.

(c) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. (June 8, 1954, 68 Stat. 217, ch. 269, § 90, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 11.)

AMENDMENT

1959—Section 11 of the act of July 23, 1959, amended the section by changing the period at the end of subsection (a) par. 2 to a semicolon and adding paragraphs 3 and 4 thereto.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-931c. Procedure in liquidation of corporation by court.

(a) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its

shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (June 8, 1954, 68 Stat. 217, ch. 269, § 91, effective Dec. 5, 1954.)

§ 29-931d. Qualifications of receivers.

A receiver shall in all cases give such bond as the court may direct with such sureties as the court may require. (June 8, 1954, 68 Stat. 218, ch. 269, § 92, effective Dec. 5, 1954.)

§ 29-931e. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (June 8, 1954, 68 Stat. 218, ch. 269, § 93, effective Dec. 5, 1954.)

§ 29-931f. Discontinuance of liquidation proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear to the court that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (June 8, 1954, 68 Stat. 218, ch. 269, § 94, effective Dec. 5, 1954.)

§ 29-931g. Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 218, ch. 269, § 95, effective Dec. 5, 1954.)

§ 29-931h. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Commissioners. No fee shall be charged by the Commissioners for the filing thereof. (June 8, 1954, 68 Stat. 219, ch. 269, § 96, effective Dec. 5, 1954.)

§ 29-931i. Survival of remedy after dissolution.

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Commissioners, or (2) by proclamation of the Commissioners for failure to pay annual report fees or file annual reports as provided in the chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, or shareholders, or any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (June 8, 1954, 68 Stat. 219, ch. 269, § 97, effective Dec. 5, 1954.)

§ 29-932. Annual report of domestic corporation.

(a) Each corporation shall file with the Commissioners, on or before April 15 of each year, an annual report setting forth—

(1) the name of the corporation, the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(2) the address, including street and number, if any, of its principal office in the District, if such office is other than its registered office;

(3) the names and respective addresses, including street and number, if any, of its directors and officers;

(4) a brief statement of the character of the business in which the corporation is actually engaged;

(5) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(6) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class.

(b) Such annual report shall be made on forms prescribed and furnished by the Commissioners, and the information therein contained shall be given as of the date of the execution of the report.

(c) It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer executing the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 219, ch. 269, § 98, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 12.)

AMENDMENTS

1959—Section 12 of the act of July 23, 1959, amended subsection (a) by renumbering pars. (2), (3), (4), and (5) as pars. (3), (4), (5), and (6) respectively and adding a new par. (2) as above set out.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This act shall take effect on the sixtieth day after the date of its enactment.

NOTES TO DECISIONS**PLACE OF BUSINESS AFTER ORGANIZATION**

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

§ 29-933. Admission of foreign corporation.

A foreign corporation shall procure a certificate of authority from the Commissioners before it transacts business in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in the District the business of banking, insurance, assurance, benefit, indemnity, building and loan association, or the acceptance of savings deposits, such corporations being admitted to and shall do business in the District of Columbia pursuant to the laws relating to such business. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of its debts, or the taking of security for the same, or by reason of the appointment of an agent for the solicitation of business not to be transacted in the District, nor for the sale of personal property to the United States within the District of Columbia unless a contract for such sale is accepted by the seller within the District or such property is delivered from stock of the seller within the District for use within the District. (June 8, 1954, 68 Stat. 219, ch. 269, § 99, effective Dec. 5, 1954.)

§ 29-933a. Powers of foreign corporation.

No foreign corporations subject to the provisions of this chapter shall transact in the District any

business for the conduct of which a domestic corporation may not be organized or which is prohibited to a domestic corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character. (June 8, 1954, 68 Stat. 220, ch. 269, § 100, effective Dec. 5, 1954.)

§ 29-933b. Corporate name of foreign corporations.

No certificate of authority shall be issued to a foreign corporation—

(a) Which has a name the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter.

(b) The name of which does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of said words, unless such corporation, for use in the District, adds at the end of its name one of such words or an abbreviation thereof. (June 8, 1954, 68 Stat. 220, ch. 269, § 101, effective Dec. 5, 1954.)

§ 29-933c. Change of name by foreign corporation.

Whenever a foreign corporation which is admitted to transact business in the District shall change its name to one under which a certificate of authority to transact business in the District would not be granted to it on application therefor, the authority of such corporation to transact business in the District shall be suspended and it shall not thereafter transact any business in the District until it has changed its name to a name which is available to it under the laws of the District. (June 8, 1954, 68 Stat. 220, ch. 269, § 102, effective Dec. 5, 1954.)

§ 29-933d. Application for certificate of authority.

A foreign corporation may procure a certificate of authority to transact business in the District by making application therefor to the Commissioners, which application shall set forth—

(a) The name of the corporation and the State under the laws of which it is organized.

(b) If the name of the corporation does not contain one of the words "corporation", "company", "incorporated", "limited", or does not contain an abbreviation of one of such words, then the name

of the corporation with the word or abbreviation which it elects to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its proposed registered office in the District, and the name of its proposed registered agent in the District at such address.

(f) (Former (f) repealed.) A brief statement of the business it proposes to transact in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

(h) Such additional information as may be necessary or appropriate in order to enable the Commissioners to determine whether such corporation is entitled to a certificate of authority to transact business in the District. Such application shall be made on forms prescribed and furnished by the Commissioners and shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (June 8, 1954, 68 Stat. 221, ch. 269, § 103, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 13.)

(i) Repealed.

(j) Repealed.

AMENDMENTS

1959—Section 13 of the act of July 23, 1959, amended the section as follows:

(1) Par. (g) redesignated as par. (f) was amended to read as above set out.

(2) Former pars. (f), (i) and (j) were repealed and pars. (g), (h) and (k) were redesignated (f), (g) and (h) respectively.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-933e. Filing of documents on application for certificate of authority.

(a) There shall be delivered to the Commissioners (1) duplicate originals of the application of the corporation for a certificate of authority, and (2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State wherein it is incorporated.

(b) If, according to law, a certificate of authority to transact business in the District should be issued to such corporation, the Commissioners shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such documents the word "Filed", and the month, day, and year of the filing thereof;

(2) file in their office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to transact business in the District, to which they shall affix the other duplicate original application.

(c) The certificate of authority with the duplicate original of the application affixed thereto by the Commissioners shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 221, ch. 269, § 104, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 23, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out recording provision in (c) and substituted new matter therein set out.

§ 29-933f. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Commissioners, the corporation shall have the right to transact business in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such right to transact business in the District as provided in this chapter. (June 8, 1954, 68 Stat. 22, ch. 269, § 105, effective Dec. 5, 1954.)

§ 29-933g. Registered office and registered agent of foreign corporation.

(a) Each foreign corporation authorized to transact business in the District shall have and continuously maintain in the District—

(1) a registered office which may be, but need not be, the same as its place of business in the District;

(2) a registered agent, which agent may be either an individual, resident in the District, whose business office is identical with such registered office, or a corporation authorized by its articles of incorporation to act as such agent and authorized to transact business in the District having a business office identical with such registered office.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each foreign corporation shall be as stated in its application for a certificate of authority to transact business in the District. (June 8, 1954, 68 Stat. 222, ch. 269, § 106, effective Dec. 5, 1954.)

§ 29-933h. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation may from time to time change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(b) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing with the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office be changed, the address including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by the board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(c) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to the provisions of this chapter, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(d) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(e) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Commissioners, who shall forthwith mail a copy thereof to the corporation at its principal office in the State under the laws of which it is organized as shown on the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (June 8, 1954, 68 Stat. 222, ch. 269, § 107, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 24, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 14.)

AMENDMENTS

1959—Section 14 of the act of July 23, 1959, amended the section by adding subsection (e) thereto.

1957—Act of September 2, 1957, cited to text, struck the recording provision in (c) (3) and substituted the new language therein set out.

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-933i. Service of process on foreign corporation.

(a) Service of process in any suit, action, or proceeding, or service of any notice or demand required or permitted by law to be served on a foreign corporation, may be made on such corporation by service thereof on the registered agent of such corporation. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand

to the president, vice president, the secretary, or an assistant secretary of such corporate agent. During any period within which a foreign corporation authorized to transact business in the District shall fail to appoint or maintain in the District a registered agent, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in the District of such corporation, or whenever the certificate of authority of any foreign corporation shall be revoked, then and in every such case the Commissioners shall be an agent and representative of such foreign corporation upon whom any process, notice, or demand may be served. Service on the Commissioners of any such foreign corporation shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies to be forwarded by registered mail, addressed to such corporation at its principal office in the State under the laws of which it is organized as the same appears in the records of the Commissioners. Any service so had on the Commissioners shall be returnable in not less than thirty days: *Provided, however,* That, if a period of less than or greater than thirty days is prescribed by law or by rules of a court in the District or the rules or regulations of any agency of the United States or of the District, such prescribed period shall govern.

(b) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Commissioners its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail, addressed to such corporation at the address given in such affidavit. Service pursuant to this subsection shall be subject to the requirements of the last sentence of subsection (a) of this section.

(c) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto. (June 8, 1954, 68 Stat. 223, ch. 269, § 108, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 25, effective Oct. 2, 1957; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 15.)

AMENDMENTS

1959—Section 15 of the act of July 23, 1959, amended the section as follows:

(1) In subsection (a) fifth sentence, inserted after "principal office" the following: "in the State under the laws of which it is organized."

(2) Redesignated subsection (b) and (c) as (c) and (d).

(3) Added new subsection (b) as above set out.

1957—Act of September 2, 1957, cited to text, changed the word "services" to the singular in the sixth sentence of subsection (a).

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of the July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-933j. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to transact business in the District are amended, such foreign corporation shall forthwith file with the Commissioners a copy of such amendment duly certified by the proper officer of the State under the laws of which such corporation is organized; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in the District, nor authorize such corporation to transact business in the District under any other name than the name set forth in its certificate of authority. (June 8, 1954, 68 Stat. 223, ch. 268, § 109, effective Dec. 5, 1954.)

§ 29-933k. Merger of foreign corporation authorized to transact business in the district.

Whenever a foreign corporation authorized to transact business in the District shall be a party to a statutory merger permitted by the laws of the State under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Commissioners a copy of the articles of merger duly certified by the proper officer of the State under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to transact in the District. (June 8, 1954, 68 Stat. 224, ch. 269, § 110, effective Dec. 5, 1954.)

§ 29-933l. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in the District shall secure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioners.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Commissioners, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority. (June 8, 1954, 68 Stat. 224, ch. 269, § 111, effective Dec. 5, 1954.)

§ 29-933m. Annual report of foreign corporations.

Each foreign corporation authorized to transact business in the District shall file on or before April 15 of each year with the Commissioners an annual report setting forth—

(a) The name of the corporation and the State under the laws of which it is organized;

(b) If the name of the corporation does not contain one of the words "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it has elected to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address.

(f) A brief statement of the character of the business in which it is actually engaged in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

Such annual report shall be made on forms prescribed and furnished by the Commissioners and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer making the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 224, ch. 269, § 112, effective Dec. 5, 1954; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 16.)

AMENDMENTS

1959—Section 16 of the act of July 23, 1959, repealed former pars. (f) and (i) and redesignated (g) and (h) as (f) and (g) respectively:

EFFECTIVE DATE OF AMENDMENT

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-934. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in the District may withdraw from the District upon procuring from the Commissioners a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the Commissioners an application for withdrawal.

(b) The application for withdrawal shall set forth—

(1) the name of the corporation and the State under the laws of which it is organized;

(2) that it is not transacting business in the District;

(3) that it surrenders its authority to transact business in the District;

(4) that it revokes the authority of its registered agent in the District to accept service of process

and consents that service of process in any suit, action, or proceeding based upon any cause of action arising in the District during the time it was authorized to transact business in the District may thereafter be made on such corporation by service thereof on the Commissioners;

(5) a post-office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them;

(6) such information as may be necessary or appropriate in order to enable the Commissioners to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(c) The application for withdrawal shall be made on forms prescribed and furnished by the Commissioners and shall be executed by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (June 8, 1954, 68 Stat. 225, ch. 269, § 113, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 26, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the word "him" and changed it to "them" in (b) (5).

§ 29-934a. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioners. Upon receipt thereof they shall examine the same, and, if they find that it conforms to the provisions of this chapter, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of withdrawal to which they shall affix the other duplicate original.

(b) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 225, ch. 269, § 114, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 27, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the recording provision in (b) and substituted the matter therein set out.

§ 29-934b. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to transact business in the District may be revoked by the Commissioners when they find that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for ninety days appoint and maintain a registered agent in the District; or

(5) the corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioners a statement of such change; or

(6) the corporation has failed to file its annual report as required by this chapter; or

(7) the corporation for a period of two years has not transacted any business in the District; or

(8) the corporation has failed to file with the Commissioners a duly authenticated copy of each amendment to its articles of incorporation within thirty days after such amendment becomes effective; or

(9) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioners unless (1) they shall have given the corporation not less than thirty days' notice by mail, addressed to such corporation at its principal office as the same appears in the records of the Commissioners or at its registered office in the District, of their intent to revoke the certificate of authority, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or to appoint a registered agent in the District, or to file the required statement of change of registered office or registered agent, or to file such annual report, or to file a statement showing that it has transacted business in the District within a period of two years, or to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (June 8, 1954, 68 Stat. 226, ch. 269, § 115, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 28, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, amended the section by designating the first paragraph as (a) and renumbering all the remaining subsections with numbers instead of letters. It also added a new subsection (b).

§ 29-934c. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioners shall—

- (1) issue a certificate of revocation in duplicate;
- (2) file one of such certificates in their office;

(3) mail to such corporation at its registered office in the District a notice of such revocation together with the other such certificate.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 226, ch. 269, § 116, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 29, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out in (a) (2) "his" and substituted "their" in its place. Added the last six words to the first phrase in (a) (3) and struck out the last sentence in (a) (3).

§ 29-934d. Effect of revocation or withdrawal upon actions and contracts.

The revocation of certificate of authority or the voluntary withdrawal of a foreign corporation whereby its authority to do business in the District shall cease and be determined, shall not affect any action then pending, nor affect any right of action upon any contract made by the corporation in the District before such revocation or withdrawal, and, in any action upon any liability or obligation so incurred before the revocation or withdrawal, the process against the corporation may be served, after the filing thereof, upon the Commissioners. (June 8, 1954, 68 Stat. 226, ch. 269, § 117, effective Dec. 5, 1954.)

§ 29-934e. Application to foreign corporations transacting business on the effective date of this chapter.

Foreign corporations transacting business in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this chapter for transacting business without a certificate of authority. (June 8, 1954, 68 Stat. 227, ch. 269, § 118, effective Dec. 5, 1954.)

§ 29-934f. Transacting business without certificate of authority.

(a) No foreign corporation which is subject to the provisions of this chapter and which transacts business in the District without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall an action at law or in equity be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in the District until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action at law or suit in equity in any court of the District.

(c) A foreign corporation which transacts business in the District without a certificate of authority shall be liable to the District, for the years or parts thereof during which it transacted business in the District without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in the District as required by this chapter and thereafter filed all reports required by this chapter; and in addition thereto it shall be liable for a penalty of not in excess of \$500. The Commissioners shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (June 8, 1954, 68 Stat. 227, ch. 269, § 119, effective Dec. 5, 1954.)

NOTES TO DECISIONS

PURPOSE OF STATUTE

Under statutes prohibiting foreign corporations transacting business in the District without a certificate from maintaining actions therein, real purpose of legislation was to bring such corporations under regulation of public officials charged with such responsibility to end that public could have the same information respecting their background and financial standing as demanded of domestic corporations and as a consequence to render them amenable to ordinary legal processes. *Hill-Lanham, Inc., v. Lightview Development Corp.* (1958, 163 F. Supp. 475).

QUALIFICATION AFTER MOTION TO DISMISS

Under statute providing that foreign corporation which transacts business in District of Columbia without a certificate of authority shall not be permitted to maintain an action at law or in equity in any court of the District until such a certificate is obtained, defendant was not entitled to have suit brought by foreign corporation on a contract entered into in District of Columbia dismissed for failure to qualify as a foreign corporation when plaintiff obtained a certificate of authority subsequent to filing of defendant's motion to dismiss the action. *Federal Loose Leaf Corp. v. Woodhouse Stationery Co.* (1958, 163 F. Supp. 482).

STATUTE NOT ABSOLUTELY PROHIBITIVE

Under the statute prohibiting a foreign corporation transacting business in the District without a certificate from maintaining an action until such certificate is obtained and that such failure shall not impair the validity of any contract or act of the corporation, non-compliance with the statutes was a mere temporary disability and capable of obviation at any stage of the proceedings and hence the statute was not absolutely prohibitive of an action of a foreign corporation but was merely suspensory until compliance with the statute. *Hill-Lanham, Inc. v. Lightview Development Corp.* (1958, 163 F. Supp. 475).

§ 29-935. Commissioners—Duties and functions.

(a) The Commissioners shall be charged with the administration and enforcement of this chapter. Said Commissioners are authorized to employ such personnel as may be necessary for the administra-

tion of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

(b) The Commissioners may transfer any or all of the functions vested in them by this chapter to any agent designated by them pursuant to the provisions of this chapter, or to any office or agency established by them pursuant to Reorganization Plan Numbered 5 of 1952.

(c) The Commissioners of the District of Columbia shall provide a distinctive official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear such legend as the Commissioners may determine.

(d) Every certificate and other document or paper executed by the Commissioners, in pursuance of any authority conferred upon them by this chapter, and sealed with the seal prescribed by subsection (b) hereof, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by them and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioners are authorized to attend and participate in the meetings of national organizations of State officials having supervision over corporations, and of the committees thereof, and there is hereby authorized to be appropriated such sums as may be necessary to defray the expenses of attendance at such meetings and to pay such annual dues or other fees as may be necessary to membership in said organizations. The Commissioners are further authorized to visit the corporation departments of the various States when in their judgment such visits are necessary or desirable in connection with the organization or proper conduct of any office or agency established by them.

(f) The Commissioners are authorized to make, modify, and enforce such regulations as they may deem necessary to carry out the provisions of this chapter, prescribe penalties for the violation of any such regulations not exceeding a fine of \$300 or imprisonment for ninety days, or both, and to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by them as they may deem appropriate. (June 8, 1954, 68 Stat. 227, ch. 269, § 120, effective Dec. 5, 1954.)

REFERENCE IN TEXT

The Classification Act of 1949 referred to in subsection (a) is set out in chapter 5 and section 944 of title 5 and section 1138 of title 12 of the United States Code.

DELEGATION OF FUNCTIONS

Organization Order No. 101, 54-1980, G. F. 29-000 of the Board of Commissioners of the District of Columbia dated September 16, 1954, was as follows:

Delegation of Authority to the Recorder of Deeds to Administer the D. C. Business Corporation Act

Pursuant to the authority contained in Public Law 389, 83d Congress, herein referred to as the D. C. Business Corporation Act, it is hereby ordered:

PART I

The following functions are delegated to the Office of Recorder of Deeds, under the supervision of the Recorder

of Deeds, D. C., who shall have full authority over such functions, including the power to redelegate to other officials and employees of his Office such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations and shall be subject to the administrative direction and control of the Commissioner to whom the Office of Recorder of Deeds is assigned.

(a) Issues certificates of incorporation, reincorporation, amendment of articles of incorporation, merger, consolidation, ownership, and dissolution of domestic corporations.

(b) Issues certificates of authority and amended certificates of authority to foreign corporations.

(c) In accordance with Section 123 (a) of the Act, issues proclamations listing the names of domestic and foreign corporations which have failed or refused to pay annual report fees, or to file annual reports. (New paragraph added by order dated Nov. 30, 1954.)

(d) Issues certificates of reinstatement to proclaimed corporations which have filed a petition of reinstatement and which otherwise comply with the requirements for reinstatement of the D. C. Business Corporation Act.

(e) Recommends to the Corporation Counsel the institution of necessary proceedings in the name of the District of Columbia, to dissolve a corporation, or to enjoin a corporation from transacting unauthorized business, and the Corporation Counsel, if he shall concur in any such recommendation shall institute and prosecute such proceeding.

(f) Receives applications for, and issues certificates of withdrawal to foreign corporations desiring to withdraw their authority to transact business from the District.

(g) Develops and proposes to the Commissioners regulations and procedures necessary for carrying out the provisions of the D. C. Business Corporation Act.

(h) Collects all fees, license taxes, penalties, and other charges, as prescribed in the D. C. Business Corporation Act, and deposits same with the Collector of Taxes, D. C.

(i) Receives and files all papers required by law to be filed in connection with incorporation, regulation, merger, consolidation, and dissolution of business corporations, domestic or foreign, in the District of Columbia.

(j) Serves as custodian of the official seal prescribed by the Commissioners for use in executing certificates and other documents or papers, in pursuance of the authority conferred by the D. C. Business Corporation Act and certifies and authenticates copies of documents and other papers filed pursuant to such Act.

(k) Serves as representative of the Commissioners in attending and participating in the meetings of national organizations of State officials having supervision over corporations, and of the committees thereof; and visits corporation departments of the various States, as necessary or desirable, in connection with the proper performance of the functions assigned herein, subject to prior approval of the Commissioners of such visits.

(l) Prescribes and furnishes forms for reports and other documents required to be filed under the provisions of the D. C. Business Corporation Act.

(m) Prepares, and provides upon request, forms for all documents and papers required to be filed under the provisions of the D. C. Business Corporation Act.

(n) Serves as consultant and adviser to the Board of Commissioners and to the heads of District departments and offices on matters relating to the incorporation, regulation, merger, consolidation, and dissolution of business corporations in the District of Columbia.

(o) Upon proper application of any person or corporation referred to in section 9 (a) of the D. C. Business Corporation Act, determines whether a specified corporate name is available for corporate use; if available, reserves the exclusive right for the applicant to the use of such name for a period of sixty days; and authorizes, upon filing of proper notice, the transfer of such name to any person or corporation other than the applicant for whom the name was reserved. (New paragraph inserted by order dated Oct. 14, 1954.)

(p) Revokes certificates of authority of foreign corporations to transact business in the District of Columbia; issues certificates of revocation of certificates of authority; and corrects errors in proclamations of revocation.

(q) Reserves names of all corporations, the articles of incorporation of which have been revoked, and of all foreign corporations, the certificates of authority of which have been revoked, until December 31 of the year in which the proclamation of revocation was issued.

(r) Refuses to file any articles, statements, certificates, reports, applications, notices or other papers relating to any corporation, domestic or foreign, organized under or subject to the Act, until all fees and charges provided to be paid in connection therewith shall have been paid to them, or while the corporation is in default in the payment of any fees, charges or penalties provided to be paid by or assessed against it.

(s) As appropriate, disapproves any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by the Act to be approved by the Commissioners before the same shall be filed in their office, and within ten days after the delivery thereof to them, to give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. (Paragraphs p, q, r, and s added by order dated Nov. 30, 1954.)

(t) In the event a domestic corporation fails to appoint or maintain a registered agent as required by law, the Recorder of Deeds, in the name of the Commissioners, shall act as agent of such corporation, upon whom any process, notice, or demand may be served; and said Recorder shall keep records of all processes, notices, and demands served thereon, and shall record the time of such service and the action with respect thereto.

(u) In the event a foreign corporation, authorized to transact business in the District, fails to appoint or maintain in the District a registered agent, as required by law, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in the District of such corporation, or whenever the certificate of authority of any foreign corporation shall be revoked, the Recorder of Deeds, in the name of the Commissioners, shall act as agent and representative of such corporation, upon whom any process, notice, or demand may be served; and said Recorder shall keep records of all processes, notices, and demands served thereon, and shall record the time of such service and the action with respect thereto. (Subsections (t) and (u) were transferred from Part II.)

(v) In the event the Commissioners of the District of Columbia receive an irrevocable appointment as an agent of a surviving or new corporation, after a merger or consolidation of domestic and foreign corporations, to accept service of process in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation, the Recorder of Deeds, in the name of the Commissioners, shall act as agent of such corporation, upon whom any process may be served, in any such proceeding; and said Recorder shall keep records of all process served, and shall record the time of such service and the action with respect thereto. (Added by order dated Nov. 30, 1954.)

(w) Assesses penalties, in accordance with section 119 (c) of the Act, in an amount not in excess of \$100 for foreign corporations transacting business in the District of Columbia without a Certificate of Authority and recommends to the Board of Commissioners any penalties proposed in excess of \$100 all such penalties to be in addition to all charges and fees which would have been imposed by the Act had the corporation duly applied for and received a Certificate of Authority. (Added by order dated and eff. June 10, 1955.)

PART II

For the purpose of carrying out the functions assigned in Part I herein, there shall be established in the Office

of Recorder of Deeds the position of Superintendent of Corporations and, in addition; so many organizational components and positions with such duties and responsibilities as the Recorder, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

All functions relating or pertaining to business corporations, Boards of Trade, Institutions of Learning, Religious Societies, Charitable, Educational, and Religious Associations, and Cooperative Associations which were transferred from the Recorder of Deeds to the Commissioners by Section 143 of the D. C. Business Corporation Act [§ 29-953 of the D. C. Code] are re-transferred to the Recorder of Deeds, including the authority to redelegate such functions as provided for in Part I herein.

§ 29-936. Fees and license taxes, and charges.

(a) There are hereby imposed the following fees and charges:

(1) fees for filing documents and issuing certificates;

(2) license fees;

(3) miscellaneous charges.

(b) The Commissioners shall charge for—

(1) filing articles of incorporation, \$20;

(2) filing amendment to articles of incorporation, \$20;

(3) filing articles of merger or consolidation, \$20;

(4) filing a statement of intent to dissolve, \$5;

(5) filing articles of reincorporation, \$20;

(6) filing articles of dissolution, \$10;

(7) filing statement of change of address of registered office or change of registered agent, or both, \$1;

(8) filing statement of the establishment of a series of shares, \$5;

(9) filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, \$20;

(10) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;

(11) filing notice of transfer of a reserved corporate name, \$5;

(12) filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, \$20;

(13) filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the District, \$5;

(14) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, \$20;

(15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$5;

(16) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$50;

(17) filing any other statement or report, except an annual report, of a domestic or a foreign corporation, \$1;

(18) for indexing each document filed, except an annual report, of a domestic or a foreign corporation, \$2;

(19) for furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, \$5;

(c) An initial license fee is hereby imposed as follows:

(1) Every domestic corporation upon the filing of its articles of incorporation shall pay, in addition to any other fees and charges imposed by this chapter, the sum of 2 cents for each authorized share of its capital stock up to and including ten thousand shares, and the sum of 1 cent for each additional authorized share up to and including fifty thousand shares, and the sum of one-half of 1 cent for each additional authorized share in excess of fifty thousand shares: *Provided*, That in any case in which the articles of incorporation, of a domestic corporation authorizes par value shares having a par value per share other than \$100 per share, then, in respect to such shares only, the aggregate par value of all of such shares shall be divided by the figure 100 and the quotient so obtained shall be the number of shares for the purpose of the initial license tax as to such shares: *And provided further*, That in no case shall the initial license fee payable be less than \$10.

(2) Every domestic corporation upon the filing of any amendment of its articles of incorporation effecting an increase of its authorized capital stock, in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section on the total of the authorized number of shares, including the proposed increase and the initial license fee so computed on the total of the authorized number of shares excluding said increase: *Provided*, That in no case shall the sum payable be less than \$10.

(3) Upon filing of articles of consolidation or articles of merger, if the corporation created in the case of articles of consolidation, or the corporation surviving in the case of articles of merger shall be a domestic corporation, then in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section upon the total of the authorized number of shares of the corporation created by such consolidation or surviving in the case of a merger and the initial license fee so computed upon the aggregate amount of the total authorized number of shares of such of the constituent corporations as are domestic corporations: *Provided further*, That in no case shall the sum payable as an initial license fee be less than \$20.

(d) Each foreign corporation authorized under the provisions of this chapter to do business in the District shall pay an annual report fee of \$10, which sum shall be paid at the time of the filing of the annual report required of such corporations under the provisions of this chapter.

(e) Each domestic corporation organized, incorporated, or reincorporated under the provisions of this chapter shall pay, at the rate hereinafter set out, an annual report fee based upon the amount of

its total authorized capital stock on the 15th day of March immediately preceding the date on which such annual report is due to be filed. The annual report fee shall be paid at the time of filing the annual report required of such corporations under the provisions of this chapter. The amount of the annual report fee shall be as follows:

Where the total authorized capital stock does not exceed \$25,000, \$15; where the total authorized capital stock exceeds \$25,000, but does not exceed \$100,000, \$25; where the total authorized capital stock exceeds \$100,000, but does not exceed \$300,000, \$40; where the total authorized capital stock exceeds \$300,000, but does not exceed \$500,000, \$70; where the total authorized capital stock exceeds \$500,000, but does not exceed \$1,000,000, \$100; and a further sum of \$50 for each \$1,000,000, or fraction thereof, in excess of \$1,000,000. Shares without par value, for the purpose of ascertaining the amount of the annual report fee, but for no other purpose, shall be taken to be of the par value of \$100 each.

(f) In the case of a newly organized corporation, the amount of the annual report fee to be paid at the time of the filing of its first annual report shall be an amount at the rates provided in subsection (e) of this section prorated on a monthly basis for the period from the date its certificate of incorporation or reincorporation was filed with the Commissioners to the April 15 on which said first annual report is due to be filed.

(g) If the annual report fee of any domestic corporation is unpaid on the April 15 on which the same is due, the annual report fee shall bear interest at the rate of 1 per centum per month until paid.

(h) All taxes, fees, and charges provided for in this chapter shall be paid to the Commissioners and deposited in the Treasury of the United States to the credit of the District. (June 8, 1954, 68 Stat. 228, ch. 269, § 121, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 30, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, amended subsection (c) (2) by striking the reference (b) and changing it to (c). Also amended (c) (3) by striking "an agreement" wherever same appeared and substituting in its place "articles"; also changed reference (b) and made it (c); struck out "shares such" and made it "shares of such" and made "constituent corporation" "constituent corporations".

§ 29-937. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorporated or reincorporated under this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be

inoperative. (June 8, 1954, 68 Stat. 230, ch. 269, § 122, effective Dec. 5, 1954.)

§ 29-938. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioners shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioners shall be filed in their office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interest.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to collect their assets, convey and dispose of such of their properties as are not to be distributed in kind to their shareholders, pay, satisfy, and discharge their liabilities and obligations and do all other acts required to liquidate their business and affairs, and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, either in cash or in kind among their shareholders according to their respective rights and interests, but not for the purpose of continuing the business for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or pro-

ceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (June 8, 1954, 68 Stat. 230, ch. 269, § 123, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 31, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the second sentence in (b) (2).

§ 29-938a. Penalty for carrying on business after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both, in the discretion of the court. (June 8, 1954, 68 Stat. 231, ch. 269, § 124, effective Dec. 5, 1954.)

§ 29-938b. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioners that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioners are authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, into good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued. (June 8, 1954, 68 Stat. 231, ch. 269, § 125, effective Dec. 5, 1954.)

§ 29-938c. Reservation of name of proclaimed corporation.

The Commissioners shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (June 8, 1954, 68 Stat. 232, ch. 269, § 126, effective Dec. 5, 1954.)

§ 29-938d. Reinstatement of proclaimed corporations.

Upon filing a petition for reinstatement by a proclaimed corporation accompanied by the filing of the delinquent reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter, and upon payment of the reinstatement fee provided by this chapter at any time after

the date of the issuance of the proclamation, the Commissioners, if they find that all of the documents offered for filing conform to law, shall file them in their office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (June 8, 1954, 68 Stat. 232, ch. 269, § 127, effective Dec. 5, 1954.)

§ 29-939. Penalty for failure to file annual report on time.

Any corporation organized under this chapter or any foreign corporation having a certificate of authority under this chapter which fails or refuses to file the annual report required by this chapter to be filed on April 15 of each year shall pay a penalty of \$25. (June 8, 1954, 68 Stat. 232, ch. 269, § 128, effective Dec. 5, 1954.)

§ 29-940. Penalty for failure to maintain registered office or registered agent.

Any corporation incorporated or reincorporated under this chapter, or any foreign corporation which has been issued a certificate of authority under this chapter, which fails or refuses to maintain a registered office or a registered agent in the District of Columbia, in accordance with the provisions of this chapter shall be deemed to be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined in an amount not exceeding \$500. (June 8, 1954, 68 Stat. 232, ch. 269, § 129, effective Dec. 5, 1954.)

§ 29-941. Effect of nonpayment of fees.

(a) The Commissioners shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to them or while the corporation is in default in the payment of any fees, charges, or penalties herein provided to be paid by or assessed against it.

(b) No corporation required to pay a fee, charge, or penalty under this chapter shall maintain in the District of Columbia any action at law or suit in equity until all such fees, charges, and penalties have been paid in full. (June 8, 1954, 68 Stat. 232, ch. 269, § 130, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 32, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, changed the word "him" to "them" in subsection (a).

§ 29-942. Penalties—Violation or failure a misdemeanor.

Any person, or corporation, who violates any provision of this chapter, or fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws

of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not exceeding \$500 for each and every violation or failure. (June 8, 1954, 68 Stat. 233, ch. 269, § 131, effective Dec. 5, 1954.)

§ 29-943. Rights and immunities of witnesses.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 8, 1954, 68 Stat. 233, ch. 269, § 132, effective Dec. 5, 1954.)

§ 29-944. Monopolies and restraints of trade.

Nothing in this chapter shall be interpreted to authorize a corporation to do any act in violation of the common law or the statutes relating to the District of Columbia or of the United States with respect to monopolies and illegal restraint of trade. (June 8, 1954, 68 Stat. 233, ch. 269, § 133, effective Dec. 5, 1954.)

§ 29-945. Waiver of notice.

Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. (June 8, 1954, 68 Stat. 233, ch. 269, § 134, effective Dec. 5, 1954.)

§ 29-946. Voting requirements of articles of incorporation.

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (June 8, 1954, 68 Stat. 233, ch. 269, § 135, effective Dec. 5, 1954.)

§ 29-947. Informal action by shareholders.

Any action required by this chapter to be taken at a meeting of the shareholders of a corporation, or

any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. In the event that the action which is consented to is such as would have required the filing of a certificate under any section of this chapter, if such action had been voted upon by the shareholders at a meeting thereof, the certificate filed under such section shall state that written consent has been given hereunder, in lieu of stating that the shareholders have voted upon the corporate action in question, if such last-mentioned statement is required thereby. (June 8, 1954, 68 Stat. 234, ch. 269, § 136, effective Dec. 5, 1954.)

§ 29-948. Appeal from Commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the United States District Court for the District of Columbia, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to transact business in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the United States District Court for the District of Columbia, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the United States District Court for the District of Columbia under this section in review of any ruling or decision of the Commissioners may be taken to the United States Circuit Court of Appeals for the District of Columbia by either party to the proceeding within sixty days after service on such party of a copy of the order or judgment of the United States District Court for the District of Columbia. (June 8, 1954, 68 Stat. 234, ch. 269, § 137, effective Dec. 5, 1954.)

§ 29-949. Certificates and certified copies of certain documents to be received in evidence.

All certificates issued by the Commissioners in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioners under the seal of their office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (June 8, 1954, 68 Stat. 234, ch. 269, § 138, effective Dec. 5, 1954.)

§ 29-950. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (June 8, 1954, 68 Stat. 235, ch. 269, § 139, effective Dec. 5, 1954.)

§ 29-951. Forms to be furnished by Commissioners.

All reports required by this chapter to be filed in the office of the Commissioners shall be made on forms which shall be prescribed and furnished by the Commissioners. Forms for all other documents to be filed in the office of the Commissioners shall be furnished by the Commissioners on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. (June 8, 1954, 68 Stat. 235, ch. 269, § 140, effective Dec. 5, 1954.)

§ 29-952. Reincorporation or incorporation of existing corporations.

I. REINCORPORATION

(a) Any corporation which is organized and existing under the laws of the District of Columbia on December 5, 1954, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter, setting forth the proposed articles of reincorporation, and directing that such proposed reincorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation; and

it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless two or more classes of shares are issued, in which event it shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class issued.

(b) Upon receiving such approval, the articles of reincorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name (which may be different from its existing name) under which the corporation elects to be reincorporated and which shall be subject to the other provisions of this chapter;

(2) the address, including street and number, if any, of its registered agent in the District of Columbia, and the name of its registered office at such address;

(3) the period of duration, which may be perpetual and which may be different from its existing period of duration;

(4) the purpose or purposes (which may be different from its existing purposes) which it will hereafter carry on, and which shall not include any purpose prohibited to a corporation organized under this chapter;

(5) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(6) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(7) any other provision, not inconsistent with law or this chapter (whether or not included in its existing certificate of incorporation), for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter in the manner set forth in the articles of reincorporation;

(9) a statement that the corporation elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this chapter;

(10) the aggregate number of shares outstanding of each class; and

(11) the number of shares of each class voted for and against such reincorporation.

(c) It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of reincorporation is inconsistent with a bylaw, the provision of the articles of reincorporation shall be controlling.

(d) Duplicate originals of the articles of reincorporation shall be delivered to the Commissioners. If the Commissioners find that the articles of reincorporation conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of reincorporation to which they shall affix the other duplicate original;

(4) deliver such certificate of reincorporation and other duplicate original to the corporation or its representative.

II. INCORPORATION

(a) Any corporation which is created under the provisions of a special Act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this chapter may avail itself of the provisions of this chapter and may become incorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated hereunder, and directing that such proposed incorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice of such proposed incorporation shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed incorporation; and it shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares, unless two or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares of each class issued.

(b) Upon such approval being given by the shareholders, a statement of incorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation, which shall contain the word "corporation", "company", "incorporated", or "limited", or shall end with an abbreviation of one of said words;

(2) the address, including street and number, if any, of its registered office in the District of Co-

lumbia, and the name of its registered agent at such address;

(3) the purpose or purposes for which the corporation was organized and which it will hereafter carry on;

(4) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(5) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(6) a statement that the corporation elects to avail itself of the provisions of this chapter and become incorporated hereunder;

(7) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated thereunder;

(8) the aggregate number of shares outstanding of each class; and

(9) the number of shares of each class voted for and against such incorporation.

(c) It shall not be necessary to set forth in the statement of incorporation any of the corporate powers enumerated in this chapter.

(d) Duplicate originals of the statement of incorporation shall be delivered to the Commissioners, together with a copy of the corporation's charter of articles or certificate of incorporation then in effect, certified by the secretary of the corporation. If the Commissioners find that the statement of incorporation conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office, together with said copy of the corporation's charter or articles or certificate of incorporation as then in effect;

(3) issue a certificate of incorporation to which they shall affix the other duplicate originals; and

(4) deliver such certificate of incorporation and other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 235, ch. 269, § 141, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 33, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out entire section and added new language as above set out.

§ 29-952a. Effect of issuance of certificate of reincorporation or incorporation.

Upon the issuance under section 29-952 of a certificate of reincorporation or of incorporation, as the case may be, by the Commissioners the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under section 29-952 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation; and the corporation shall be entitled to and be possessed of all the privileges, franchises, and powers and subject to all the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved, and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter: *Provided, however,* That any corporation thus reincorporating or incorporating under the provisions of this chapter shall be subject to all the contracts, debts, claims, duties, liabilities, and obligations of the corporations thus reincorporated or incorporated as if such reincorporation or incorporation had not taken place and neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such reincorporation or incorporation. Such reincorporated or incorporated corporation shall not be subject to the payment of the initial license tax provided by this chapter. (June 8, 1954, 68 Stat. 237, ch. 269, § 142, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 574, Pub. L. 85-254, § 34, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, amended the catchline to read as above set out, and also struck the first three and a half lines up to the word "and" and inserted the new matter set out above.

NOTES TO DECISIONS

PLACE OF BUSINESS AFTER ORGANIZATION

The Business Corporation Act of District of Columbia, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the Act "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PRE-EXISTING CORPORATION

The provision of Business Corporation Act of District of Columbia granting to a corporation which is reincorporated under the Act all the the privileges and powers and making corporation subject to all provisions

of the Act was intended to place a pre-existing corporation on equality with one newly organized, so far as benefits and burdens under the Act were concerned, but in order not to deprive a pre-existing corporation of that which it already had, the subsequent provision confirming and assuring all privileges and powers theretofore belonging to the corporation was intended to preserve them intact. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

PRINCIPAL PLACE OF BUSINESS

The proviso of Business Corporation Act of District of Columbia that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215).

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *H. G. Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 105 U.S. App. D.C. 378, 267 F. 2d 655).

§ 29-953. Transfer of duties of Recorder of Deeds.

(a) All powers conferred and all duties imposed upon the Recorder of Deeds of the District of Columbia by any Act of Congress in relation to the organization of corporations, the amendment of certificates of incorporation or charters of corporations, change in capital stock, change of name, reincorporation, dissolution, or other corporate action are on December 5, 1954, hereby transferred to, imposed upon, and shall be exercised or performed by the Commissioners; and wherever the words "Recorder of Deeds" or other words denoting that officer appear in any of the Acts of Congress relating to the organization of corporations under the laws of the District of Columbia, or to amendments to the certificate of incorporation or charter of any corporation organized and existing under any of such Acts, or to changes of name, changes of capital stock, reincorporation, dissolution, or other corporate action of any such corporation, whether such words relate to the powers and duties of such officer in relation to organization of corporations under any such Acts, or to any of the corporate Acts hereinbefore enumerated or are used in connection with the imposition of obligations or duties or the conferring of rights or privileges upon corporations or other persons, such words shall be construed to mean the Commissioners. All fees and charges, except as hereinafter provided, now chargeable by the Recorder of Deeds for doing the work or performing the services hereby transferred to the Commissioners shall, after December 5, 1954, be charge-

able by the Commissioners. On and after December 5, 1954, all certificates of incorporation or charters for the organization of corporations under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or for the amendment of any such certificate of incorporation or charter, changes in capital stock, reincorporation, dissolution, or other corporate action under any such chapter, shall be delivered to the Commissioners in duplicate original. If the Commissioners find that any such document conforms to law, they shall, when all fees have been paid as prescribed by law—

(1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(b) The filing of such document in the office of the Commissioners shall have the same force and effect as the recordation or lodging for recordation of certificates of incorporation and other corporate documents hereinbefore enumerated, formerly had in the office of the Recorder of Deeds.

(c) On December 5, 1954, the Commissioners shall take possession of all original books, papers, and records theretofore filed, recorded, used, or acquired by the Recorder of Deeds in the exercise of the powers and in the performance of the duties hereby transferred to the Commissioners, but nothing herein contained shall require the Recorder of Deeds to transfer any copies or transcripts of corporate papers that may constitute part of the records of his office. (June 8, 1954, 68 Stat. 238, ch. 269, § 143, effective Dec. 5, 1954; Sept. 2, 1957, 71 Stat. 575, Pub. L. 85-254, § 35, effective Oct. 2, 1957.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out (a) (3) relating to recording and inserted the matter now therein set out. It also struck out "of" after "recordation" and changed it to "or".

DELEGATION OF FUNCTIONS

See note following section 29-935 for transfer of authority to the Recorder of Deeds to administer the D. C. Business Corporation Act.

§ 29-954. Constitutionality—Partial invalidity.

The invalidity of any portion of this chapter shall not affect the validity of any other portion thereof which can be given effect without such invalid part. (June 8, 1954, 68 Stat. 238, ch. 269, § 144, effective Dec. 5, 1954.)

§ 29-955. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (June 8, 1954, 68 Stat. 238, ch. 269, § 145, effective Dec. 5, 1954.)

§ 29-956. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (June 8, 1954, 68 Stat. 239, ch. 269, § 147, effective Dec. 5, 1954.)

§ 29-957. Use of certified mail.

Wherever provision of this chapter authorizes or requires the service or forwarding of any process, notice, or demand by registered mail, such provision shall be deemed to include as an alternative the service or forwarding of such process, notice, or demand by certified mail. (June 8, 1954, ch. 269, § 148, as added, July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

EFFECTIVE DATE

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

§ 29-958. Civil actions and prosecutions.

All civil actions under this chapter which the Commissioners are authorized to commence, and all prosecutions for violations of the provisions of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. (June 8, 1954, ch. 269, § 149, as added, July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

EFFECTIVE DATE

1959—Section 18 of the act of July 23, 1959, provides: This Act shall take effect on the sixtieth day after the date of its enactment.

TITLE 30.—DOMESTIC RELATIONS

Chapter 1.—MARRIAGE

§ 30-101 [14: 1]. Prohibitions—Marriages void ab initio.

NOTES TO DECISIONS

DEFENSE IN COLLATERAL PROCEEDINGS

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1950, 185 F. 2d 429, 87 U. S. App. D. C. 334).

PREVIOUS UNDISSOLVED MARRIAGE

Where parties were married in Maryland and husband had a previous undissolved marriage, marriage was void ab initio in District of Columbia without being so decreed. *M. Koonin, next friend of C. L. D. Hornsby v. H. H. Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

VOIDABLE MARRIAGES

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *D. R. Duley etc. v. E. L. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-102 [14:2]. Marriage may be decreed to be void.

VOIDABLE MARRIAGES

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *D. R. Duley etc. v. E. L. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-103 [14: 3]. Marriages void from date of decree—Age of consent.

VOIDABLE MARRIAGES

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was

age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *D. R. Duley etc. v. E. L. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-104 [14: 4]. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

NOTES TO DECISIONS

MINOR'S DOMICILE

Where minor, 19 years of age contracted a marriage in Maryland and thereafter discovered that husband had a previous undissolved marriage, minor could not acquire a domicile by choice in District of Columbia either before or after her marriage and Municipal Court for the District of Columbia did not have jurisdiction to declare marriage a nullity although decree sought was available in her domiciliary state and in state where marriage was performed. *M. Koonin, next friend of C. L. D. Hornsby v. H. H. Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

SUIT BY FEMALE MINOR

Procedure of bringing suit for annulment of a marriage by a minor in name of a next friend is proper where minor is under age of consent; however, where female minor is over age of 18, suit should be brought in minor's name. *M. Koonin, next friend of C. L. D. Hornsby v. H. H. Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

VOIDABLE MARRIAGES

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *D. R. Duley etc. v. E. L. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-105 [14: 5]. Marriage out of District of domiciled persons.

NOTES TO DECISIONS

DEFENSE IN COLLATERAL PROCEEDINGS

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1950, 185 F. 2d 429, 87 U. S. App. D. C. 334).

§ 30-106 [14:6]. Persons authorized to perform marriage ceremony.

NOTES TO DECISIONS

RELIGIOUS CORPORATIONS AND SOCIETIES, DEFINED

Belief in or teaching of a Supreme Being or supernatural power is not essential to qualify for tax exemption accorded to "religious corporations," "churches" or "religious societies," under the D. C. Code. *Washington Ethical Society v. District of Columbia* (1957, 101 U. S. App. D. C. 371, 249 F. 2d 127).

RELIGIOUS PRACTICES

A Washington Ethical Society which holds regular Sunday services and has "leaders" to preach and minister to the members who are trained graduates of established theological institutions qualifies as a "religious corporation or society" and its building is one primarily and regularly used for public religious worship and entitled to tax exemption under the District of Columbia Tax Statute. *Washington Ethical Society v. District of Columbia* (1957, 101 U. S. App. D. C. 371, 249 F. 2d 127).

Chapter 2.—PROPERTY RIGHTS

§ 30-201 [14:21]. Married women—Power to dispose of separate property—Under 21 years of age.

Subject to provisions of subsection (b) of section 18-201a, married women shall hold all their property of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as husbands have the power to dispose of their property, and no more; except that no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8.)

AMENDMENTS

1957—Act of August 31, 1957, cited to text, amended the section to read as above set out.

EFFECTIVE DATE OF AMENDMENT

1957—Section 11 of the act of August 31, 1957, cited to text, provides: "This Act shall become effective ninety days after the date of its enactment."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of the act of August 31, 1957, cited to text, provides: "Any provision of law inconsistent with the provisions of this Act (classified to sections 18-101, 18-215a, 18-201a, 18-210, 18-211, 18-212, 18-714, 18-715, 18-716, 18-717 and 30-201) or any amendment made by this Act, is hereby repealed."

NOTES TO DECISIONS

TENANCY BY ENTIRETY

Under Married Woman's Property Statute, husband can not assert exclusive right to rents and profits from property owned by spouses as tenants by entireties or divest wife of her share thereof either directly by conveyance

or indirectly by execution, so that neither may convey any interest in property without other's authority or consent, nor perform any act or make any contract respecting property which would prejudicially affect other spouse. *Deschenes v. McFerren* (D.C. Mun. App. 1956, 125 A. 2d 386).

Where husband's contract to sell realty owned by spouses as tenants by entireties was not accepted on behalf of wife, who had been adjudged of unsound mind, purchasers were liable to spouses for reasonable rental value of purchasers' use and occupancy of property after being notified by husband that he had decided not to sell property and that no committee would be appointed for wife, as he had promised purchasers, though they received permission from husband to enter into possession of property. *Id.*

Good faith reliance by persons contracting with husband to purchase realty owned by spouses as tenants by entireties on his promise to have a committee appointed to accept contract for his wife, who had been adjudged of unsound mind, did not entitle purchasers to possession of property after notice to them by husband that he had decided not to sell property and that no committee would be appointed for wife. *Id.*

§ 30-208 [14:43]. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

NOTES TO DECISIONS

MINOR'S CLAIM FOR LOSS OF MOTHER'S SUPPORT

Minor child would not, on basis of negligent injury to mother by third parties, have enforceable claim against the third parties for loss of mother's support, education, care, society, affection, and kindness during period of mother's incapacity. *S. M. Pleasant, Minor etc. v. Washington Sand & Gravel Co., et al.* (1958, 104 U.S. App. D.C. 374, 262 F. 2d 471).

TORT ACTION AGAINST HUSBAND

Where automobile passenger sued driver, who was partner of passenger's husband, and others, for injuries sustained in intersectional collision, and passenger's husband was joined as plaintiff, but not as defendant, and suit was not against partnership, under District of Columbia law, the suit was not barred by rule that spouses are not liable for tortious acts of one against the other, though the alleged tort was committed within the ambit of partnership activities. *Tobin v. Hoffman* (D. C. Mun. App. 1953, 96 A. 2d 597).

Under District of Columbia law, the common law rule that spouses are not liable for tortious acts of one against the other is extant and unaffected by code provision that married women shall have power to sue for torts committed against them. *Id.*

§ 30-211 [14:46]. Husband liable for wife's acts in certain cases.

NOTES TO DECISIONS

LIABILITY FOR NECESSARIES

Married Women's Act for the District of Columbia does not substitute common law liability of husband for that of wife but retains it as an additional security for benefit of the other contracting party even though there may be situations in which wife can render herself liable for necessities when contracted for independently of husband. *Stein v. Woodward & Lothrop; Stein v. Frank R. Jelleff, Inc.* (D. C. Mun. App. 1950, 77 A. 2d 564).

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap. Sec.
14. Public school food services..... 31-1401

Chapter 1.—BOARD OF EDUCATION

§ 31-101 [7: 1]. Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and super-sedeas bond.

(a) * * *

(b) The judges of the United States District Court for the District of Columbia shall have power to remove any member of the Board of Education at any time for adequate cause affecting his character and efficiency as a member, after a public hearing on a verified complaint filed by the United States Attorney for the District of Columbia, or one of his assistants, and on issues framed by a verified answer. The United States District Court of the District of Columbia is empowered to promulgate rules to carry out the purpose of this subsection. (Aug. 2, 1957, 71 Stat. 341, Pub. L. 85-119, § 1.)

AMENDMENTS

The act of August 2, 1957, cited to text, amended the section by designating the old section as (a) and adding the new matter set out as subsection (b).

CROSS REFERENCE

Duties of Board of Education in connection with plans and specifications for school buildings, § 9-219.

Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

§ 31-207 [7: 97]. Failure to keep child at school a misdemeanor—Penalty.

CROSS REFERENCE

Suspension of sentence in cases in Juvenile Court, § 11-968.

Chapter 3.—TUITION OF NONRESIDENTS

Sec.

31-301a. Attendance at Teachers' College by foreign students.

31-306. Pupils dwelling outside the District.

§ 31-301 [7: 161]. Payment of tuition by nonresidents—Board of Education to fix amount of tuition—Payments deposited in treasury.

CROSS REFERENCE

Pupils dwelling outside District, § 31-306.

§ 31-301a. Attendance at Teachers' College by foreign students.

Notwithstanding any other provision of law, not to exceed twenty-five foreign students who are in the United States on valid unexpired student visas may be permitted to attend the District of Columbia Teachers College each year on the same basis, so far as payment of tuition and fees are concerned, as a resident of the District of Columbia. Admission

to and attendance at such college by such students shall be subject to rules and regulations prescribed by the Board of Education of the District of Columbia. (Apr. 23, 1958, 72 Stat. 98, Pub. L. 85-384, § 1.)

§ 31-302 [7: 162]. Taxes levied and paid for year preceding time of levying tuition charge credited.

CROSS REFERENCE

Pupils dwelling outside District, § 31-306.

§ 31-303 [7: 163]. Admission of pupils whose parents are employed in District of Columbia.

CROSS REFERENCE

Pupils dwelling outside District, § 31-306.

§ 31-304 [7: 164]. Soldiers and sailors on duty at stations adjacent to District of Columbia admitted without tuition.

CROSS REFERENCE

Pupils dwelling outside District, § 31-306.

§ 31-305 [7: 165]. Children of officers and men of Army and Navy and of employees of United States stationed outside District admitted without tuition.

CROSS REFERENCE

Pupils dwelling outside District, § 31-306.

§ 31-306. Pupils dwelling outside the District.

No part of the appropriations made for the public schools of the District of Columbia shall be used for the free instruction of pupils who dwell outside the District of Columbia. (June 29, 1949, 63 Stat. 309, ch. 279, § 1.)

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

Sec.

31-659a-1. Salaries of teachers, school officers and other employees—Service steps.

31-660a. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

31-661a. Probationary period.

31-662a. Rules for assignment to salary classes—Comparative tables.

31-663a. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters.

31-664a. Method of assignment to service steps—Promotion of employees.

31-665a. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.

31-666a. Salary increases of probationary employees—Termination of employment.

31-667a. Temporary employees—Assignment, salaries and termination of employment.

31-668a. Effective date of promotions to group B and C—Assignment to numerical service steps.

31-669a. Promotions—Assignment to numerical service steps.

31-670a. Employment of retired members of armed services.

Sec.

- 31-671a. Evening, summer, and Americanization schools—Salaries.
- 31-672a. Classification of certain employees as teachers.
- 31-673a. Applicability of sections 31-698 and 698a.
- 31-674a. Applicability of sections 31-632 to 31-637 and of sections 31-691 to 31-697.
- 31-675a. Applicability of sections 31-699 to 31-699b and of sections 31-721 to 31-739.
- 31-680. Only one person to be in charge of certain school departments—Rate of compensation.
- 31-681. Teachers in the Americanization schools—Custodial staff.
- 31-682. Teaching vacancies—Assignment of teachers.
- 31-691a. Credit for cumulative leave on transfer or promotions.
- 31-691b. Reinstatement after leave without pay granted.
- 31-694a. Days of leave with pay, defined.
- 31-696. Employment of substitutes.
- 31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.
- 31-698. Regulation of vacation periods and annual leave by the Board of Education.
- 31-698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

§ 31-609 [7:50]. Salaries—How paid.

The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June: *Provided*, That the salaries of other teachers shall begin when they enter upon their duties. The Board of Education is authorized to designate the months in which the ten salary payments shall be made to teachers assigned to instruction in elementary science and school

gardening, and in health, physical education, and playground activities. (May 26, 1908, 35 Stat. 291, ch. 198; May 21, 1928, 45 Stat. 645, ch. 659, § 1; Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1; June 29, 1932, 47 Stat. 360, ch. 308, § 1; June 16, 1933, 48 Stat. 236, ch. 93, § 1; Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1; July 15, 1939, 53 Stat. 1017, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1; July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

AMENDMENTS

This section is a composite of the acts cited in the credit line.

COMPILER'S NOTE

The changes in the last sentence made by substituting "elementary science" for "nature study" and by striking the words "now required by law" are the result of the District of Columbia appropriation act for 1944. These changes were not made to this section in previous editions of the code.

§ 31-632. Granting of leave authorized--Limitation on number.

CROSS REFERENCE

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, § 1-312.

§ 31-659 to § 31-680. Repealed, act of August 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955.

COMPILER'S NOTE

Section 20 of the act of August 5, 1955, provided: "The District of Columbia Teachers' Salary Act of 1947, approved July 7, 1947, as amended, is hereby repealed." The 1947 act, as amended, was formerly set out as sections 31-659 to 31-680.

SALARY SCHEDULES

§ 31-659a-1. Salaries of teachers, school officers and other employees—Service steps.

The following are the salary schedules for teachers, school officers, and certain other employees of the Board of Education of the District of Columbia whose positions are included therein:

[illegible]

Salary class and position	Service step 1 (mini- mum)	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13
Class 8:													
Group B, master's degree-----	\$8, 500	\$8, 725	\$8, 950	\$9, 175	\$9, 400	\$9, 625	\$9, 850	\$10, 075	\$10, 300	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	8, 700	8, 925	9, 150	9, 375	9, 600	9, 825	10, 050	10, 275	10, 500	-----	-----	-----	-----
Professor, teachers college.													
Principal, junior high school.													
Principal, Americanization school.													
Supervising director.													
Class 9:													
Group B, master's degree-----	8, 100	8, 325	8, 550	8, 775	9, 000	9, 225	9, 450	9, 675	9, 900	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	8, 300	8, 525	8, 750	8, 975	9, 200	9, 425	9, 650	9, 875	10, 100	-----	-----	-----	-----
Director, Department of School Attendance and Work Per- mits.													
Principal, elementary school.													
Principal, Capitol Page School.													
Class 10:													
Group B, master's degree-----	8, 000	8, 225	8, 450	8, 675	8, 900	9, 125	9, 350	9, 575	9, 800	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	8, 200	8, 425	8, 650	8, 875	9, 100	9, 325	9, 550	9, 775	10, 000	-----	-----	-----	-----
Assistant principal, senior high school.													
Assistant principal, vocational high school.													
Class 11:													
Group A, bachelor's degree-----	7, 300	7, 525	7, 750	7, 975	8, 200	8, 425	8, 650	8, 875	9, 100	-----	-----	-----	-----
Group B, master's degree-----	7, 800	8, 025	8, 250	8, 475	8, 700	8, 925	9, 150	9, 375	9, 600	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	8, 000	8, 225	8, 450	8, 675	8, 900	9, 125	9, 350	9, 575	9, 800	-----	-----	-----	-----
Assistant Director, Depart- ment of Food Services.													
Class 12:													
Group B, master's degree-----	7, 700	7, 925	8, 150	8, 375	8, 600	8, 825	9, 050	9, 275	9, 500	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	7, 900	8, 125	8, 350	8, 575	8, 800	9, 025	9, 250	9, 475	9, 700	-----	-----	-----	-----
Assistant principal, junior high school.													
Assistant principal, Americani- zation school.													
Class 13:													
Group B, master's degree-----	7, 400	7, 625	7, 850	8, 075	8, 300	8, 525	8, 750	8, 975	9, 200	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	7, 600	7, 825	8, 050	8, 275	8, 500	8, 725	8, 950	9, 175	9, 400	-----	-----	-----	-----
Associate professor, teachers college.													
Class 14:													
Group B, master's degree-----	7, 300	7, 525	7, 750	7, 975	8, 200	8, 425	8, 650	8, 875	9, 100	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	7, 500	7, 725	7, 950	8, 175	8, 400	8, 625	8, 850	9, 075	9, 300	-----	-----	-----	-----
Assistant principal, elementary school.													
Class 15:													
Group B, master's degree-----	7, 100	7, 325	7, 550	7, 775	8, 000	8, 225	8, 450	8, 675	8, 900	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	7, 300	7, 525	7, 750	7, 975	8, 200	8, 425	8, 650	8, 875	9, 100	-----	-----	-----	-----
Assistant director.													
Statistician.													
Class 16:													
Group B, master's degree-----	6, 400	6, 625	6, 850	7, 075	7, 300	7, 525	7, 750	7, 975	8, 200	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	6, 600	6, 825	7, 050	7, 275	7, 500	7, 725	7, 950	8, 175	8, 400	-----	-----	-----	-----
Assistant professor, teachers college.													
Chief librarian, teachers college.													
Assistant.													
Supervisor.													
Chief attendance officer.													
Clinical psychologist.													
Class 17:													
Group B, master's degree-----	5, 700	5, 925	6, 150	6, 375	6, 600	6, 825	7, 050	7, 275	7, 500	-----	-----	-----	-----
Group C, master's degree plus 30 credit hours-----	5, 900	6, 125	6, 350	6, 575	6, 800	7, 025	7, 250	7, 475	7, 700	-----	-----	-----	-----
Psychiatric social worker.													
Class 18:													
Group A, bachelor's degree-----	4, 500	4, 675	4, 850	5, 025	5, 200	5, 375	5, 550	5, 725	5, 900	\$6, 075	\$6, 250	\$6, 425	\$6, 600
Group B, bachelor's degree-----	5, 000	5, 175	5, 350	5, 525	5, 700	5, 875	6, 050	6, 225	6, 400	6, 575	6, 750	6, 925	7, 100
Group C, master's degree plus 30 credit hours-----	5, 200	5, 375	5, 550	5, 725	5, 900	6, 075	6, 250	6, 425	6, 600	6, 775	6, 950	7, 125	7, 300
Attendance officer.													
Census supervisor.													
Child labor inspector.													
Counselor.													
Instructor, teachers college.													
Librarian.													
Research assistant.													
School psychologist.													
School social worker.													
Teacher, elementary and sec- ondary schools.													

(Aug. 5, 1955, 69 Stat. 521, ch. 569, § 1, title I, eff. July 1, 1955; July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85-838, § 1, eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 of the act of August 28, 1958, cited to text, struck out the old salary schedules and substituted new ones as above set out.

Act of July 25, 1958, cited to text, amended Class 1 of the schedule in the section by increasing the salary of the superintendent of schools to \$19,000 and also eliminating the provisions with respect to degrees as originally provided in Class 1.

EFFECTIVE DATE

Section 25 of act of August 5, 1955, cited to text, provided: "This Act (§ 31-659a-1 to § 31-675a) shall become effective on July 1, 1955."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 4 (b) of the act of July 25, 1958, cited to text, provides that section 1 of the act shall take effect on the first day of the first pay period which begins after the date of enactment of the act.

GROUP LIFE INSURANCE PROVISIONS IN ACT OF
AUGUST 28, 1958, PUB. L. 85-838

Section 4 (b) of the act of August 28, 1958, provides as follows: (b) For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954, as amended, all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the first day of the first pay period which begins on or after the date of such enactment.

RETROACTIVE COMPENSATION UNDER ACT AUGUST 28, 1958,
PUB L. 85-838

Section 2 of the act of August 28, 1958, cited to text, provides as follows with respect to payment of retroactive compensation:

Retroactive compensation or salary shall be paid by reason of sections 31-659a-1, 31-660a, 31-662a, 31-663a to 31-665a, 31-671a, 31-673a, 31-674a, and 31-680 only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on August 28, 1958, except that such retroactive compensation or salary shall be paid (1) to any employee covered in section 1 of this act who retired during the period beginning on the day following the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, for services rendered during such period and (2) in accordance with the provisions of the act of August 3, 1950 (Public Law 636, Eight-first Congress), as amended (sections 61f to 61k, title 5, U.S. Code), for services rendered during the period beginning on the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, by any such employee who dies during such period.

SHORT TITLE

Section 24 of act of August 5, 1955, cited to text, provided: "This Act may be cited as 'District of Columbia Teachers' Salary Act of 1955.'"

CLASSIFICATION AND ASSIGNMENT OF
EMPLOYEES

§ 31-660a. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent

of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-659a-1. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1957, or to which they may be transferred and assigned under the provisions of section 31-662a and section 31-663a. No teacher, school officer, or other employee shall be appointed or promoted to any position in section 31-659a-1 on probationary or permanent status unless he possesses a master's degree, except that a person possessing a bachelor's degree may be appointed on probationary or permanent status as Director of Food Services, Assistant Director of Food Services, Supervising Director of Military Science and Tactics, teacher of military science and tactics, teacher of driver training, shop teacher in the vocational education program, teacher in the junior high schools, counselor in the vocational high schools, counselor in the junior high schools, teacher in the elementary schools, school social worker, research assistant, attendance officer, child labor inspector, or census supervisor, and a person not possessing a bachelor's degree may be appointed on probationary or permanent status as shop teacher in the vocational education program if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1957.

(b) Notwithstanding any provision of sections 31-659a-1 to 31-675a and 31-680 the Board is authorized, on the written recommendation of the Superintendent of Schools, to appoint or promote shop teachers in the vocational education program to salary class 18, group B, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, and to appoint or promote such teachers to salary class 18, Group C, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, plus thirty credit hours. The Board is further authorized, on the written recommendation of the Superintendent of Schools, to appoint or promote vocational shop teachers with the training and experience required for placement in salary class 18, group B, to administrative or supervisory positions in the vocational education program.

(c) When used in sections 31-659a-1 to 31-675a—

(1) The term "master's degree" means a master's degree granted in course by an accredited higher educational institution.

(2) The term "plus thirty credit hours" means the equivalent of not less than thirty graduate semester hours in academic, vocational, or professional courses beyond a master's degree, represent-

ing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the thirty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such thirty credit hours.

(3) The terms "Board" and "Board of Education" mean the Board of Education of the District of Columbia.

(4) The term "Salary Act of 1947" means the District of Columbia Teachers' Salary Act of 1947, as amended. (Aug. 5, 1955, 69 Stat. 523, ch. 569, sec. 2, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1 (2), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (2) of the act of August 28, 1958, cited to text, amended the section as follows:

(1) Struck out "June 30, 1955" in two places in subsection (a) and changed it to "December 31, 1957".

(2) In the fourth sentence struck out all after "master's degree" and substituted the new matter above set out.

(3) Amended subsection (b) to read as above set out.

(4) In subsection (c) par. (1) struck out all reference to "doctor's degree".

(5) In subsection (c) par. (2) struck out the first sentence and substituted the new matter set out above.

§ 31-661a. Probationary period.

For other than temporary employees and the Superintendent of Schools, the first two years of service in each position covered by section 31-659a-1 shall be probationary regardless of any change in title or numbers used in classifying the position. Teachers, school officers, and other employees who have satisfactorily completed the probationary period in any position covered by section 31-659a-1 and whose permanent appointments have been approved by the Board shall be considered employees of the Board on permanent tenure. (Aug. 5, 1955, 69 Stat. 524, ch. 569, sec. 3, eff. July 1, 1955.)

METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-662a. Rules for assignment to salary classes—Comparative tables.

Each teacher, school officer, and other employee in the service of the Board on January 1, 1958, who occupies a position held by him on December 31, 1957, under the provisions of sections 31-659a-1 to 31-675a shall be placed in a salary class covered by section 31-659a-1 as indicated at the end of this section. Any employee in group A, B, or C of his salary class on December 31, 1957, shall be assigned to the same letter group of the class to which he is transferred on January 1, 1958, except that an employee in group B on December 31, 1957, who possesses a master's degree or its equivalent as determined by the Board in accordance with subsection (b) of section 31-660a, plus thirty credit hours, shall be transferred to group C. Teachers college employees in salary classes 8, 13, and 16 on January 1, 1958, shall be assigned to group C.

TITLE AND CLASS OF POSITION ON DECEMBER 31, 1957		TITLE AND CLASS OF POSITION ON JANUARY 1, 1958	
Title	Class	Title	Class
Superintendent of schools	1	Superintendent of schools	1
Deputy superintendent	2	Deputy superintendent	2
Assistant superintendent	3	Assistant superintendent	3
President, teachers college	3	President, teachers college	3
Dean, teachers college	4	Dean, teachers college	4
Executive assistant to superintendent	5	Executive assistant to superintendent	5
Dean of students, teachers college	5	Dean of students, teachers college	5
Director, Department of Food Services	6	Director, Department of Food Services	6
Director	7	Director	7
Administrative assistant to deputy superintendent	7	Administrative assistant to deputy superintendent	7
Registrar, teachers college	7	Registrar, teachers college	7
Chief examiner	7	Chief examiner	7
Principal, senior high school	7	Principal, senior high school	7
Professor, teachers college	8	Professor, teachers college	8
Principal, vocational high school	9	Principal, vocational high school	7
Principal, junior high school	9	Principal, junior high school	8
Principal, Americanization school	9	Principal, Americanization school	8
Supervising director	10	Supervising director	8
Director, Department of School Attendance and Work Permits	10	Director, Department of School Attendance and Work Permits	9
Principal, elementary school	10	Principal, elementary school	9
Principal, laboratory school	10	Principal, elementary school	9
Associate professor, teachers college	11	Associate professor, teachers college	13
Assistant director, Department of Food Services	12	Assistant director, Department of Food Services	11
Assistant director	13	Assistant director	15
Principal, Capitol Page School	13	Principal, Capitol Page School	9
Assistant principal, senior high school	13	Assistant principal, senior high school	10
Statistician	13	Statistician	15
Assistant professor, teachers college	14	Assistant professor, teachers college	16
Chief librarian, teachers college	14	Chief librarian, teachers college	16
Assistant principal, vocational high school	15	Assistant principal, vocational high school	10
Assistant principal, junior high school	15	Assistant principal, junior high school	12
Assistant principal, Americanization school	15	Assistant principal, Americanization school	12
Assistant principal, elementary school	16	Assistant principal, elementary school	14
Assistant	17	Assistant	16
Chief attendance officer	17	Chief attendance officer	16
Supervisor	17	Supervisor	16
Clinical psychologist	17	Clinical psychologist	16
Instructor, teachers college	18	Instructor, teachers college	18
Librarian, teachers college	18	Librarian	18
Teacher, senior high school	18	Teacher, elementary and secondary school	18
Teacher, vocational high school	18	Teacher, elementary and secondary school	18
Teacher, junior high school	18	Teacher, elementary and secondary school	18
Teacher, elementary school	18	Teacher, elementary and secondary school	18
School librarian	18	Librarian	18
Counselor	18	Counselor	18
Research assistant	18	Research assistant	18
School psychologist	18	School psychologist	18
School social worker	18	School social worker	18
Attendance officer	19	Attendance officer	18
Child labor inspector	19	Child labor inspector	18
Census supervisor	19	Census supervisor	18

(Aug. 5, 1955, 69 Stat. 524, ch. 569, sec. 4, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1 (4), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (4) of the act of August 28, 1958, cited to text, amended the section to read as above set out.

§ 31-663a. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters.

(a) Sections 31-659a-1 to 31-675a apply to all positions under the Board which require at least a bachelor's degree in an appropriate field, and in addition—

(1) involve classroom or other instruction or the supervision and direction of classroom and other instructional activities; or

(2) involve activities, other than teaching, which require the incumbents to possess academic credits in educational theory and practice at least equivalent to those required of a teacher with a bachelor's degree; or

(3) involve activities which are so directly related to the educational process that the positions have characteristics of the educational field to a marked degree, even though academic credits in educational theory and practice are not required; or

(4) involve the management or direction or organizational units or school services which, though not directly involved in the educational process, require the incumbent to deal so extensively with employees who are directly involved in the educational process in problems that require an understanding of the aims, methods and points of view of educators and educational philosophy, that it becomes impractical, insofar as salary treatment is concerned, to attempt to distinguish between them and positions covered under paragraphs (1), (2), or (3) of this subsection. This paragraph (4) shall apply only to such positions as are necessary to coordinate such noneducational units or services with the educational activities of the school system.

(b) The Board, with the concurrence of the Board of Commissioners of the District of Columbia, is authorized to determine which positions meet the criteria specified in subsection (a) of this section and to establish or transfer positions covered under other wage or salary fixing acts or authorities to the coverage of sections 31-659a-1 to 31-675a. Similarly, the Board, with the concurrence of the said Board of Commissioners, is authorized to determine that positions covered under sections 31-659a-1 to 31-675a do not meet the criteria specified in subsection (a) of this section and to remove any such position from the coverage of sections 31-659a-1 to 31-675a: *Provided*, That any employee occupying any position covered by sections 31-659a-1 to 31-675a on July 1, 1955, but which is later determined not to meet the criteria specified in subsection (a) of this section, shall continue to be entitled to the salary and other benefits of sections 31-659a-1 to 31-675a as long as he remains in such position. The Board, subject to the concurrence of the said Board of Commissioners, is authorized to specify for any position to be brought under sections 31-659a-1 to 31-675a, the class and group as established in sections 31-659a-1 to 31-675a which shall apply to such position: *Provided*, That such class shall be selected on the basis of the difficulty, responsibility, and qualification requirements of such position. Positions brought under sections 31-659a-1 to 31-675a in accordance with this section shall be subject to the provisions of this chapter to the same degree and in all respects as if such positions were specifically named in sections 31-659a-1 to 31-675a. The Board is authorized to conduct such studies as are required to apply the criteria specified in subsection (a) of this section. The Board of Education of the District of Columbia, with the cooperation of the Board of Commissioners of the District of Columbia, is authorized to make a study of the classification

of the positions covered under sections 31-659a-1 to 31-675a for the purpose of determining what classification adjustments may be necessary or desirable to provide a classification alignment based on the difficulty, responsibility, and qualification requirements of the positions and to take such appropriate corrective action as is concurred in by the Board of Commissioners: *Provided*, That any such adjustments shall be made within the classes established by sections 1-659a-1 to 31-675a: *Provided further*, That no adjustment resulting from this study shall decrease the existing rate of compensation of any present employee, but when a position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay determined to be applicable to such position. If a position is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class, he shall receive the higher of such rates. If a position is placed in a higher salary class, placement for salary purposes shall be made in accordance with section 31-669a. (Aug. 5, 1955, 69 Stat. 525, ch. 569, sec. 5, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1 (5), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (5) of the act of August 28, 1958, cited to text, added the matter beginning with "The Board of Education of the District of Columbia" to subsection (b).

METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

§ 31-664a. Method of assignment to service steps—Promotion of employees.

(a) As of January 1, 1958, each employee assigned to a salary class in accordance with section 31-659a-1 and section 31-662a shall be assigned to the same numerical service step on the schedule for his class, or class and group, under sections 31-659a-1 to 31-675a as he occupied on December 31, 1957. On July 1, 1958, each permanent employee in the service of the Board who on June 30, 1958, was in such service but was not yet at the highest numerical service step for his salary class, or class and group, in section 31-659a-1 shall be assigned to the numerical service step for his class, or class and group, in section 31-659a-1 next above the step occupied by him on June 30, 1958. As soon as possible thereafter, and not later than June 30, 1959, the Board shall re-evaluate the previous service of each probationary and permanent employee under sections 31-659a-1 to 31-675a who served in the public schools of the District of Columbia prior to July 1, 1955, who also was in service in such schools on July 1, 1958, and who on July 1, 1958, was not assigned to the highest numerical service step of the salary schedule for his class, or class and group, to determine the number of years of service with which the employee shall be newly credited for the purpose of salary placement. All such employees shall be given placement credit for previous service in accordance with the provisions of sections 31-659a-1 to 31-675a governing the placement, advancement, and promotion of employees who are newly ap-

pointed, reappointed or reassigned to positions in the District of Columbia public schools.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under sections 31-659a-1 to 31-675a next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such reevaluation, but no employee shall receive a salary above the top step for his class, or class and group, or below the step already occupied by him. If such reevaluation places the employee on a higher numerical service step than the one already occupied by him, he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. Beginning on July 1, 1959, each permanent employee who has not yet reached the highest service step for his salary class, or class and group, under sections 31-659a-1 to 31-675a shall advance one such step each year until he reaches the highest step for his class, or class and group.

(c) The Superintendent of Schools, salary class 1, shall be assigned as of the date of his appointment as Superintendent to the salary step provided for that position in section 31-659a-1.

(d) Any permanent employee serving in a position which is not covered by sections 31-659a-1 to 31-675a but which may later be established under section 31-663a shall be given service credit for the purpose of salary placement under sections 31-659a-1 to 31-675a equivalent to the number of years of satisfactory service rendered within the school system in the position then occupied by the employee, and shall be assigned to the numerical service step on the schedule for his class, or class and group, under sections 31-659a-1 to 31-675a next above the numerical service step corresponding to his years of creditable service in such position. If the employee has already attained a service step in such position which is numerically as high or higher than the top service step provided for his salary class, or class and group, under sections 31-659a-1 to 31-675a, he shall be assigned to the highest service step provided for his class, or class and group, under sections 31-659a-1 to 31-675a. (Aug. 5, 1955, 69 Stat. 526, ch. 569, sec. 6, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1 (6), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (6) of the act of August 28, 1958, cited to text, amended the section to read as above set out.

§ 31-665a. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.

(a) Each employee who is newly appointed or reappointed to a position under section 31-659a-1, except the Superintendent of Schools, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each such employee to deter-

mine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 18 shall receive one year of such placement credit for each year of satisfactory service, not in excess of five years, in the same type of position regardless of school level, in an educational system or institution of recognized standing outside the District of Columbia public schools, as determined by the Board: *Provided*, That employees appointed to the positions of attendance officer, census supervisor, child labor inspector, counselor, librarian, research assistant, school psychologist, and school social worker shall also receive one year of placement credit for each year of satisfactory service in a teaching position, but not in excess of five years for all types of service rendered outside the school system, and persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board, but not in excess of five years for any combination of trade experience and educational service outside the school system. Employees newly appointed or reappointed to the positions of chief librarian and assistant professor (class 16), associate professor (class 13), and professor (class 8) shall receive one year of placement credit for each year of satisfactory service, not in excess of five years, in a position of the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 1 to 17 inclusive, except the positions of chief librarian and assistant professor, associate professor and professor, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. Employees reappointed or reassigned to positions in classes 2 to 18 inclusive shall receive one year of placement credit for each year of satisfactory service in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no employee shall receive more than five years of placement credit for previous service in any combination of the following: (1) service rendered outside the public school system, (2) service rendered as a temporary employee within such system, and (3) service rendered prior to reappointment after resignation from such system. Credit for service rendered either inside or outside the District of Columbia public schools shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later.

(b) In crediting previous experience of any teacher who has been absent from his duties because of naval or military service in the armed forces of the United States or its allies, the Board is hereby authorized to include such naval or military service as the equivalent of approved experience.

(c) No provision in sections 31-659a-1 to 31-675a shall be interpreted as preventing any teacher,

school officer, or other employee of the Board who has been granted leave to enter the armed forces of the United States or its allies from receiving any annual service increment or increments to which he would have been entitled had he remained continuously in the service of the public schools. (Aug. 5, 1955, 69 Stat. 527, ch. 569, sec. 7, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85-838, § 1 (7), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (7) of the act of August 28, 1958, cited to text, amended subsection (a) to read as above set out.

§ 31-666a. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position covered by section 31-659a-1 shall receive his first increase in salary in that position on the beginning day of his second year of probationary service in the position; he shall receive his second increase in salary in that position on the date when his appointment or promotion to the position is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position in accordance with section 31-664a and section 31-665a.

(b) Any employee in the service of the Board on the effective date of sections 31-659a-1 to 31-675a appointed or promoted on probationary tenure during the period from July 1, 1952, to June 30, 1955, inclusive, to a position covered by section 31-662a shall be compensated for salary increases in accordance with subsection (a) of this section and shall receive his first increase effective as of the first date of his second year of probationary service based upon the rates of pay currently in effect on that date and such employee shall be assigned on July 1, 1955, to the numerical service step in the salary schedule for his class, or class and group, in section 31-659a-1 corresponding to his number of years of creditable service.

(c) The Board is authorized to terminate the services of any probationary employee in the class to which appointed, upon the written recommendation of the Superintendent of Schools, at any time during the two year probationary period: *Provided*, That if an employee so terminated has permanent status within the school system he shall be returned to the salary class he last occupied on permanent status, and placed on the step which would have been occupied by him. (Aug. 5, 1955, 69 Stat. 528, ch. 569, sec. 8, eff. July 1, 1955.)

§ 31-667a. Temporary employees—Assignment, salaries and termination of employment.

The Board is hereby authorized to appoint and assign temporary employees within the salary structure of section 31-659a-1, whenever such action is necessary and recommended in writing by the Superintendent of Schools. Such appointments shall be for periods not to extend beyond June 30 of the fiscal year in which the appointments are

made and the Board is authorized to terminate the appointment of any temporary employee at any time upon the written recommendation of the Superintendent of Schools. Each temporary employee shall be assigned to a numerical service step and receive an annual rate of compensation in accordance with section 31-665a, but he shall receive no annual service increments and may be credited with not more than five years of service either inside or outside the public schools of the District of Columbia for the purpose of salary placement. (Aug. 5, 1955, 69 Stat. 528, ch. 569, sec. 9, eff. July 1, 1955.)

§ 31-668a. Effective date of promotions to group B and C—Assignment to numerical service steps.

(a) On and after July 1, 1955, each promotion to group B, or group C, within a salary class shall become effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the effective date of the master's degree or the completion of thirty credit hours beyond the master's degree, whichever is later.

(b) Any employee in a position covered by section 31-659a-1 who is promoted to group B or group C of the same salary class shall be assigned to the same numerical service step on the schedule for his new group as he would have occupied on the schedule from which promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, sec. 10, eff. July 1, 1955.)

§ 31-669a. Promotions—Assignment to numerical service step.

Any employee in a salary class covered by section 31-659a-1, when promoted to a higher-paid salary class, shall be assigned to the lowest numerical service step on the schedule for his new class, or class and group, which will give him an immediate increase in annual salary rate at least equal to the sum of the following:

(1) Any annual service increment to which the employee would have been entitled in his former salary class at the time of his promotion; and

(2) The annual service increment scheduled for his new class and group: *Provided*, That no such employee shall be assigned to a higher numerical service step on the schedule for his new class, or class and group, than he would have occupied on the schedule from which promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, sec. 11, eff. July 1, 1955.)

ACCOMPANYING LEGISLATION

§ 31-670a. Employment of retired members of armed services.

Notwithstanding any law or regulation to the contrary, the Board, on the written recommendation of the Superintendent of Schools, may employ not more than fifteen retired members of the armed services of the United States as teachers of military science and tactics in the public high schools of the District of Columbia, and such teachers so employed shall be entitled to compensation in accordance with the salary schedules in section 31-659a-1, in addition to their retired pay and allowances. (Aug. 5, 1955, 69 Stat. 529, ch. 569, sec. 12, eff. July 1, 1955.)

§ 31-671a. Evening, summer, and Americanization schools—Salaries.

(a) The Board is hereby authorized to conduct as parts of the public school system, summer schools, evening schools, and an Americanization School, under and within appropriations made by Congress. The pay rates for teachers, officers, and other educational employees in the summer and evening schools shall be as follows:

Classification	Step 1	Step 2	Step 3
SUMMER SCHOOLS (REGULAR)			
Per diem			
Teacher, elementary and secondary schools.....	\$16.37	\$18.38	\$20.39
Instructor, teachers college.....			
Assistant professor, teachers college.....	20.33	21.79	24.10
Assistant principal, senior high school.....	22.59	25.36	28.14
Associate professor, teachers college.....	22.67	24.63	27.25
Supervising director.....	23.74	26.65	29.56
Principal, elementary school.....	22.92	25.73	28.55
Principal, junior high school.....	23.74	26.65	29.56
Professor, teachers college.....	25.67	27.48	30.39
Principal, senior high school.....	24.55	27.57	30.58
VETERANS SUMMER HIGH-SCHOOL CENTERS			
Per diem			
Teacher.....	\$24.55	\$27.57	\$30.58
EVENING SCHOOLS			
Per period			
Teacher.....	\$4.69	\$5.01	\$5.34
Assistant principal, secondary school.....	5.85	6.55	7.29
Principal, elementary school.....	5.94	6.66	7.39
Principal, secondary school.....	6.36	7.14	7.92

(b) Beginning on January 1, 1958, each teacher, officer, and other educational employee serving in the summer or evening schools shall be paid at the rate specified for his position under step 1 of the schedule in subsection (a) of this section while serving his first, second, and third years in such position; he shall be paid at the rate specified under step 2 while serving his fourth, fifth, and sixth years in such position; and he shall be paid at the rate specified in step 3 while serving his seventh and any subsequent years in such position.

(c) When an employee covered by the pay schedule in subsection (a) of this section is promoted to a higher paid position in this same schedule, he shall be paid during his first three years of service in such position at the scheduled rate for such position which is next above the rate he would have received if continued in his previous position; he shall be paid at the next higher scheduled rate for his position during his second three years of service in such position; and he shall be paid at the scheduled rate above that (if any) during his subsequent years in such position. (Aug. 5, 1955, 69 Stat. 529, ch. 569, sec. 13, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1 (13), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (13) of the act of August 28, 1958, cited to text, amended the section to read as above set out.

§ 31-672a. Classification of certain employees as teachers.

Each employee assigned to salary class 18 in the schedule provided in section 31-659a-1, each chief

librarian and each assistant professor in salary class 16, each associate professor in class 13, and each professor in class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law. (Aug. 5, 1955, 69 Stat. 529, ch. 569, sec. 14, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1 (14), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (14) of the act of August 28, 1958, cited to text, amended the section to read as above set out.

§ 31-673a. Applicability of sections 31-698 and 31-698a.

On and after January 1, 1958, sections 31-698 and 31-698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes 7-17, inclusive, under section 31-659a-1, except the following: Chief examiner, administrative assistant to deputy superintendent, and registrar, teachers college, in class 7; professor, in class 8; Director, Department of School Attendance and Work Permits, in class 9; Assistant Director, Department of Food Services, in class 11; associate professor, in class 13; statistician, in class 15; assistant professor and chief librarian, in class 16. (Aug. 5, 1955, 69 Stat. 529, ch. 569, sec. 15, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1 (15), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (15) of the act of August 28, 1958, cited to text, struck out "July 1, 1955" and substituted "January 1, 1958" in its place. It also struck out the second sentence of the section and substituted the new exception clause above set out.

§ 31-674a. Applicability of sections 31-691 to 31-697 and of sections 31-632 to 31-637.

(1) On and after January 1, 1958, sections 31-691 to 31-697 shall apply to employees of the Board whose salaries are fixed in salary class 18, and to the following employees in the salary classes indicated: Professor, class 8; associate professor, class 11; chief librarian and assistant professor, class 14, under sections 31-659a-1 to 31-675a.

(2) On and after July 1, 1955, sections 31-632 to 31-637 shall apply to employees of the Board whose salaries are fixed under section 31-659a-1. (Aug. 5, 1955, 69 Stat. 529, ch. 569, secs. 16, 17, eff. July 1, 1955; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1 (16), eff. Jan. 1, 1958.)

AMENDMENTS

1958—Section 1 (16) of the act of August 28, 1958, cited to text, struck out "July 1, 1955" in paragraph (1) and changed it to "January 1, 1958", it also struck out the phrase "and the position of attendance officer, salary class 19" from the same paragraph.

§ 31-675a. Applicability of sections 31-699 to 31-699b and of sections 31-721 to 31-739.

(1) On and after July 1, 1955, sections 31-699 to 31-699b shall apply to employees of the Board whose salaries are fixed under section 31-659a-1.

(2) On and after July 1, 1955, sections 31-721 to 31-739 shall apply to probationary and permanent employees of the Board whose salaries are fixed under section 31-659a-1, and all references in sec-

tions 31-721 to 31-739 to the Salary Act of 1947 shall be interpreted to apply to sections 31-659a-1 to 31-675a. Nothing in this subsection shall require the recomputation of the annuity of any person retired under sections 31-721 to 31-739 prior to the effective date of sections 31-659a-1 to 31-675a, or of any person retired prior to the effective date of sections 31-721 to 31-739, whose annuity is computed in accordance with the provisions of sections 31-721 to 31-739. (Aug. 5, 1955, 69 Stat. 529, ch. 569, secs. 18, 19, eff. July 1, 1955.)

§ 31-680. Only one person to be in charge of certain school departments—Rate of compensation.

From and after ten days following the approval of sections 31-659a-1, 31-660a, 31-662a, 31-663a to 31-665a, 31-671a, 31-673a, 31-674a, and 31-680 there shall be only one person in charge of the following departments in the public school system of the District of Columbia: Art, Business Education, English, Foreign Languages, Guidance and Placement, History, Home Economics, Industrial Arts, Mathematics, Military Science and Tactics, Music, Science, Trade and Industrial Education, and Health, Physical Education, Athletics, and Safety; except that in the case of persons reassigned pursuant to this section, nothing contained herein shall be construed to decrease the rate of compensation that any such person is receiving on the effective date of this section. If such person is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class, he shall receive the higher of such rates. Whenever a department is established hereafter in the public school system of the District of Columbia there shall be but one person in charge of such department. (Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 3, eff. Jan. 1, 1958.)

§ 31-681. Teachers in the Americanization schools—Custodial staff.

Officers and teachers in the Americanization, evening, and summer schools may also be officers and teachers in the regular day schools.

Members of the custodial staff in the evening, summer, and Americanization schools may also be members of the custodial staff in the day schools. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

COMPILER'S NOTE

These provisions are found in the District of Columbia appropriations act for the fiscal year ended June 30, 1944.

1955—This section was formerly numbered 31-699.

§ 31-682. Teaching vacancies—Assignment of teachers.

Teaching vacancies which occur during any school year may be filled by the assignment of teachers of special subjects and teachers not now assigned to classroom instruction, and such teachers are hereby made eligible for such assignment without further examination. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

COMPILER'S NOTE

1955—This section was formerly numbered 31-699a.

SICK AND EMERGENCY LEAVES

§ 31-691. Sick and emergency leaves authorized for teachers and attendance officers.

All teachers and attendance officers in the employ of the Board of Education of the District of Columbia shall be entitled to cumulative leave with pay for personal illness, presence of contagious disease or death in the home, or pressing emergency, in accordance with such rules and regulations as the said Board of Education may prescribe. Such cumulative leave with pay shall be granted at the rate of one day for each month from September through June of each year, both inclusive. The total cumulation shall not exceed seventy-five days for probationary and permanent teachers and attendance officers, and the total cumulation shall not exceed twenty days for temporary teachers and attendance officers.

Under such rules and regulations as the Board of Education may prescribe any teacher or attendance officer may use three days of such cumulative leave with pay in any school year for any purpose, upon giving timely notice of intended absence. (As amended Oct. 29, 1951, 65 Stat. 660, ch. 601, § 1.)

AMENDMENTS

1951—The act of Oct. 29, 1951, amended the section by striking the words "sixty" and "ten" and substituting in lieu thereof the words "seventy-five" and "twenty" respectively, and by adding the last sentence.

EFFECTIVE DATE OF AMENDMENT

Section 6 of the act of Oct. 29, 1951, cited to text, provided: "This Act shall take effect on the first day of the second month following its enactment."

CROSS REFERENCE

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, § 1-312.

§ 31-691a. Credit for cumulative leave on transfer or promotion.

When any person occupying a position, the salary of which position is fixed by classes 1 through 12 of section 31-659, or a position as attendance officer, the salary of which position is fixed in class 32, of section 31-659, is transferred or promoted to any position in the schedule in classes 13 through 34, of section 31-659 (other than a position in class 32) shall be entitled to have credited to his account as accumulated sick leave as provided by the Act entitled "An Act to standardize sick leave and extend it to all civilian employees", approved March 14, 1936 (sections 29a, 30b, 30c, 30d, 30e, and 30h of title 5 U. S. C.), as amended, the same number of days as are credited to him as cumulative leave with pay under the provisions of sections 31-691 to 31-697. (Oct. 29, 1951, 65 Stat. 660, ch. 601, § 4.)

EFFECTIVE DATE

See note following § 31-691.

§ 31-691b. Reinstatement after leave without pay granted.

Any teacher or attendance officer who after December 1, 1951 is granted leave without pay by the Superintendent of Schools or the Board of Educa-

tion shall be reinstated to the position from which leave was granted or to an equivalent position when said employee is ready to resume his duties in accordance with the rules of the Board of Education existing at the time such leave was granted. (Oct. 29, 1951, 65 Stat. 661, ch. 601, § 5.)

EFFECTIVE DATE

See note following § 31-691.

§ 31-692. Additional leave credits for service prior to July 1, 1949.

In addition to the cumulative leave provided by section 31-691, each probationary and permanent teacher shall be credited on July 1, 1949, with one day of leave with pay for each complete year of service in the public schools of the District of Columbia prior to July 1, 1949: *Provided*, That the leave credited under the provisions of this section shall be granted for the same purposes as leave with pay is provided in section 31-691. Attendance officers shall be credited on July 1, 1949, with all cumulative leave with pay to which they are entitled on June 30, 1949, under the provisions of section 31-676. The total cumulation of leave with pay allowable under sections 31-691 to 31-697 and sections 31-659 to 31-678 shall not exceed seventy-five days, and no attendance officer shall be entitled to annual or sick leave with pay under the provisions of any other act. (As amended Oct. 29, 1951, 65 Stat. 660, ch. 601, § 2.)

AMENDMENTS

1951—The act of Oct. 29, 1951, amended the section by striking from the first sentence the words "total amount to be" and inserting in lieu thereof the word "leave"; by striking from the proviso the words "shall not exceed twenty days and" which appeared between the words "section" and "shall"; and by substituting "seventy-five" for "sixty" in the last sentence.

EFFECTIVE DATE

See note following § 31-691.

§ 31-694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed twenty-five days to every probationary or permanent teacher or attendance officer who may apply for such advanced leave. (As amended Oct. 29, 1951, 65 Stat. 660, ch. 601, § 3.)

AMENDMENTS

1951—The act of Oct. 29, 1951, amended the section by substituting the words "twenty-five" for the word "twenty".

EFFECTIVE DATE

See note following § 31-691.

§ 31-694a. Days of leave with pay, defined.

Effective July 1, 1949, the days of leave with pay provided for by sections 31-691 to 31-697, shall mean days upon which teachers and attendance officers would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board of Education. (Dec. 20, 1950, 64 Stat. 1114, ch. 1141, § 1.)

COMPILER'S NOTE

This section was inadvertently omitted from the 1951 edition of the Code. Section 2 of the act, cited to text, is not set out, as it is now executed.

§ 31-696. Employment of substitutes.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay or on leave without pay and to fix the rate of compensation to be paid such substitutes. Service rendered by such substitutes shall not be regarded as service within the meaning of the Civil Service Retirement Act of May 29, 1930, as amended. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6, eff. July 1, 1949; Aug. 5, 1953, 67 Stat. 362, ch. 319, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, § 22, eff. July 1, 1955.)

EFFECTIVE DATE

Section 2 of the act of August 5, 1953, provided: "This Act shall become effective as of July 1, 1949."

EFFECTIVE DATE OF AMENDMENT

Section 25, of the act of August 5, 1955, cited to text, provided that this act shall become effective on July 1, 1955.

AMENDMENTS

1955—The act of August 5, 1955, cited to text, amended the section by adding the last sentence thereto.

1953—Act of August 5, 1953, amended the section by the addition of the words "or on leave without pay" following the word "pay".

§ 31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.

Persons who have retired as teachers under the provisions of Title 31, chapter 7, D. C. Code; or the Act entitled "An Act for the retirement of employees in the classified civil service, and for other purposes", approved May 22, 1920 (title 5, sec. 691, U. S. C.), as amended; may be employed as substitute teachers in the public schools of the District of Columbia when it is not practicable otherwise to secure qualified and competent persons. Any such persons granted temporary employment under authority of this section shall continue to receive their annuities during such employment and no deduction shall be made from the compensation of such persons for retirement benefits. The service rendered by such retired teachers employed as substitute teachers shall not be used to recompute their annuities. (Apr. 24, 1958, 72 Stat. 98, Pub. L. 85-385, § 1.)

§ 31-698. Regulation of vacation periods and annual leave by the Board of Education.

The authority to regulate the vacation periods and annual leave of absence of all individuals employed by the Board of Education of the District of Columbia, whose positions are included in salary classes 13-23, inclusive, established by sections 31-659 to 31-678, shall be vested solely in the Board of Education of the District of Columbia. The annual leave of absence granted by the Board of Education of the District of Columbia under the authority of this section shall be in lieu of annual leave of absence granted under any other Act. (Mar. 5, 1952, 66 Stat. 14, ch. 81, § 1.)

**§ 31-698a. Leave accrued prior to March 5, 1952—
Authority of Board of Education to promulgate
rules.**

Notwithstanding the provisions of any other law to the contrary, no individual whose position is within the purview of sections 31-698 and 31-698a shall, by virtue of the enactment of section 31-698 be entitled to lump-sum payment or payments for annual leave accrued or current as of March 5, 1952, but all such individual's annual leave, accrued or current as of March 5, 1952, shall be credited to him for his use and benefit, and to be used in accordance with rules promulgated by the Board of Education. (Aug. 5, 1953, 67 Stat. 362, ch. 320, § 1.)

COMPILER'S NOTE

Act of August 5, 1953, amended act of March 5, 1952, entitled "An Act to provide that the Board of Education of the District of Columbia shall have sole authority to regulate the vacation periods and annual leave of absence of certain school officers and employees of the Board of Education of the District of Columbia" (D. C. Code § 31-698), by the addition of a new section included above as section 31-698a.

§ 31-699. Transferred.

COMPILER'S NOTE

The act of July 1, 1943, 57 Stat. 322, ch. 184, § 1, was renumbered and is now set out as section 31-681.

§ 31-699a. Transferred.

COMPILER'S NOTE

The act of July 1, 1943, 57 Stat. 322, ch. 184, § 1, was renumbered and is now set out as section 31-682.

**Chapter 7.—RETIREMENT OF PUBLIC SCHOOL
TEACHERS**

Sec.

- 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to go to straight life annuity.
- 31-740. Waiver of annuity—Revocation.
- 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.
- 31-742. Unremarried widow or widower entitled to annuity—Conditions—Amount—Termination.
- 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.
- 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.

§ 31-716a. Estimates of annual appropriations—Actuarial valuations.

The Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury, and the Commissioners are authorized to expend from money to the credit of the teachers' retirement fund not exceeding \$5,000 per annum for this purpose, including personal services. (Aug. 3, 1951, 65 Stat. 155, ch. 292, § 1.)

REPEATED

Act July 31, 1953, 67 Stat. 279, ch. 299, § 1.
Act July 5, 1952, 66 Stat. 375, ch. 576, § 1.

COMPILER'S NOTE

Sec. 1 of the act of Aug. 3, 1951, cited to text, is substantially the same as a provision which appeared in prior

annual appropriation acts. The last phrase of prior enactments: "without regard to the Civil Service and classification laws." was omitted.

§ 31-721. Deductions—Filing certificates—Interest bearing accounts—Optional deposits—Refunds.

Beginning on the first day of the second month following June 4, 1957, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 6½ per centum of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to the effective date of sections 31-721 to 31-739 under sections 31-701 to 31-710, 31-712 to 31-720, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of sections 31-721 to 31-739 and thereafter at 3 per centum per annum, compounded annually from December 31 of the year in which the deductions are made: *Provided*, That such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed five years of teaching service interest shall be credited to the date of separation. These individual interest-bearing accounts shall be kept by the Auditor of the District of Columbia.

Any teacher may at his option and under such regulations as may be prescribed by the Commissioners of the District of Columbia deposit with the Collector of Taxes, District of Columbia, additional sums in multiples of \$25 but not to exceed 10 per centum per annum of his annual salary, pay, or compensation, for services rendered since March 1, 1920, which amount together with interest thereon at 3 per centum per annum compounded as of December 31 of each year, shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Commissioners of the District of Columbia, in addition to the annuity provided by sections 31-721 to 31-739; the purchase price of such annuity shall be based upon an interest rate of 3 per centum per annum compounded annually and upon such table of mortality as shall from time to time be prescribed by the Commissioners of the District of Columbia. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3 per centum compounded annually from December 31 of the year in which the deposits are made shall be refunded in accordance with the provisions of sections 31-721 and 31-730, respectively. A separate individual account shall be kept by the Auditor of the District of Columbia with respect to the voluntary deposits and interest of each teacher. (As amended Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—The act of June 4, 1957, amended the section by striking out the first sentence, which provided for

deduction of 6 percent of the teacher's annual salary, and substituting a new sentence as above set out. The section was also amended by inserting the proviso clause as above set out.

1955—The act of August 5, 1955, cited to text, amended the section by striking out "June 30" wherever it appeared in the section and inserted in lieu thereof "December 31" with the proviso, *that interest shall not be compounded as of December 31, 1955.*

1952—Act Mar. 6, 1952, amended the section as follows: By striking from the first sentence thereof the words "beginning as the 1st day of the September following the effective date of this Act"; by striking from the first sentence thereof the words "annual amount computed to the nearest tenth of a dollar" and inserting in lieu thereof the word "amount"; by striking from the first sentence thereof the figure "5" and inserting in lieu thereof the figure "6"; and by striking therefrom the second, third, and fourth sentences which provided that certificates showing deductions be filed by the Commissioners with the Board of Education.

CROSS REFERENCE

1955—Act of August 5, 1955, 69 Stat. 529, sec. 19, effective July 1, 1955 (classified as section 31-675a-(2)) provides that all references in sections 31-721 to 31-739 shall be interpreted to apply to sections 31-659a-1 to 31-675a.

EFFECTIVE DATE OF AMENDMENT

1957—Section 4 of the act of June 4, 1957, cited to text, provides: "The effective date of this Act shall be October 1, 1956".

1955—Section 25 of act of August 5, 1955, cited to text, provided that this act shall become effective on July 1, 1955.

1952—Section 11 of the act of March 6, 1952, cited to text, provided "This Act shall take effect on the first day of the second month following its enactment."

INTERNAL REFERENCE

The act referred to in the first sentence of this section is obviously the act of June 4, 1957. For sake of clarity the words "June 4, 1957," were substituted for the phrase "the enactment of this Act".

NONAPPLICABILITY OF ACT OF JUNE 4, 1957, TO CERTAIN CASES

Section 2 of the act of June 4, 1957, provides as follows: The amendments made by this Act (classified to sections 31-721, 31-723, 31-724, 31-725, 31-726, 31-728, 31-729, 31-733) shall not apply in the case of teachers retired or otherwise separated prior to its effective date, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if this Act had not been enacted.

§ 31-723. Voluntary retirement—Retirement at age 70—Minimum period of service.

(a) Any teacher to whom sections 31-721 to 31-739 apply who shall have attained or shall hereafter attain the age of sixty years and has rendered at least thirty years of service computed as prescribed in section 31-728, or shall hereafter attain the age of sixty-two years and has rendered at least five years of service computed as prescribed in section 31-728, may voluntarily retire and shall be eligible for retirement on an annuity computed as provided in section 31-725.

(b) Any teacher to whom sections 31-721 to 31-739 apply who shall have attained or shall hereafter attain the age of fifty-five years and shall have rendered at least thirty years of service, computed as prescribed in section 31-728, may voluntarily retire and shall be paid an immediate life annuity beginning on the first day of the month following the date of separation from the service, computed

as prescribed in section 31-725, reduced by one-twelfth of 1 per centum for each full month such teacher is under sixty years of age.

(c) Any teacher who shall have attained or shall hereafter attain the age of sixty-two years and is eligible for retirement under the provisions of sections 31-721 to 31-739, may be retired by the Board of Education upon written recommendation of the Superintendent of Schools. Any teacher who shall have attained, or shall hereafter attain the age of seventy years, shall be retired unless upon written recommendation of the Superintendent of Schools two-thirds of the members of the Board of Education vote to retain such teacher in the public schools for the good of the service. No sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been employed as a teacher on active duty in the public schools of the District of Columbia for a total period of not less than five years.

(d) Any teacher who completes twenty-five years of service or who attains the age of fifty years and completes twenty years of service shall upon involuntary separation from the service not by removal for cause on charges of misconduct or delinquency, be paid a reduced annuity computed as provided in section 31-725 (a) reduced by one-twelfth of 1 per centum for each full month not in excess of sixty and by one-sixth of 1 per centum for each full month in excess of sixty such teacher is under the age of sixty years at date of separation. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Section 1 of the act of June 4, 1957, cited to text, amended subsection (a) by striking out "fifteen" and substituting "five" in its stead. It amended subsection (b) by striking out "one-fourth" and substituting "one-twelfth" in its stead. It also amended subsection (c) by striking from the last sentence the word "ten" and inserting in its place the word "five", and finally it added subsection (d) thereto as above set out.

1952—The act of Mar. 6, 1952, amended the method of computing the life annuity.

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

§ 31-724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.

Any teacher to whom sections 31-721 to 31-739 apply who shall have served on active duty in the public schools of the District of Columbia for a total period of not less than five years, and who, before becoming eligible for retirement under the conditions defined in the preceding sections hereof, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31-725 and 31-726 hereof: *Provided, That proof of*

freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Health Officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

* * * * *

In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of sections 31-721 to 31-739, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of section 31-729 hereof: *Provided, however,* That if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of section 31-721, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of sections 31-721 to 31-739, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of section 31-721. (As amended Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Section 1 of the act of June 4, 1957, cited to text, amended the first paragraph by striking out the word "ten" and inserting in lieu thereof the word "five".

1952—The act of Mar. 6, 1952, substituted "so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest" for the words "the annuity payments made under (1) of section 31-725 hereof" in the last paragraph.

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

§ 31-725. Computation of annuity—Options.

(a) Except as otherwise provided in sections 31-721 to 31-740, every teacher who shall be retired under the provisions of section 31-723 or section 31-724 shall receive an annuity composed of (1) the larger of (A) $1\frac{1}{2}$ per centum of the average salary as defined in section 31-733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed five years, plus (2) the larger of (A) $1\frac{3}{4}$ per centum of the average salary multiplied by

so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds five years but does not exceed ten years, plus (3) the larger of (A) 2 per centum of the average salary multiplied by so much of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds ten years. Annuities granted under the terms of these sections 31-721 to 31-739 shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in section 31-723 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under section 31-724.

(b) Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to his or her surviving widow or widower designated by such teacher at time of retirement equal to 50 per centum of such life annuity. The life annuity of the teacher making such election, excluding any increase because of retirement under section 31-724, shall be reduced by $2\frac{1}{2}$ per centum of so much thereof as does not exceed \$2,400 and by 10 per centum of so much thereof as exceeds \$2,400. The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or widower's attainment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage.

(2) If unmarried and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the Auditor of the District of Columbia at the time of retirement, during the life of such survivor annuitant equal to 50 per centum of such reduced annuity and upon the death of such survivor annuitant all payments shall cease and no further annuity shall be due and payable. The annuity hereunder payable to the teacher shall be 90 per centum of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than five years younger than the annuitant; 85 per centum if the survivor annuitant is five but less than ten years younger; 80 per centum if the survivor annuitant is ten but less than fifteen years younger; 75 per centum if the survivor annuitant is fifteen but less than twenty years younger; 70 per centum if the survivor annuitant is twenty but

less than twenty-five years younger; and 60 per centum if the survivor annuitant is twenty-five or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Health Officer of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under this subsection and an annuity under subsection (b) of section 31-729 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of section 31-730. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age seventy.

(c) (1) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the teachers' retirement and annuity fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between—	Annuity not in excess of \$1,500 shall be increased by—	Annuity in excess of \$1,500 shall be increased by—
August 20, 1920, and June 30, 1955...	12 per centum...	8 per centum
July 1, 1955, and December 31, 1955...	10 per centum...	7 per centum
January 1, 1956, and June 30, 1956...	8 per centum...	6 per centum
July 1, 1956, and December 31, 1956...	6 per centum...	4 per centum
January 1, 1957, and June 30, 1957...	4 per centum...	2 per centum
July 1, 1957, and December 31, 1957...	2 per centum...	1 per centum

Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in subsection (c) (1) of this section appropriate to the commencing date of such survivors annuity. (As amended Mar. 6, 1952, 66 Stat. 17, ch. 95, § 4; Aug. 5, 1955, 69 Stat. 530, ch. 569, § 23; July 2, 1956, 70 Stat. 487, ch. 497, § 1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Section 1 of the act of June 4, 1957, cited to text, struck out the first sentence of subsection (a) dealing with the subject matter of computation of annuities and substituted the new matter set out above in its place.

The same section also struck out the second sentence in subsection (b) (1) which dealt with reduction of annuities in case the teacher elected to provide benefits for a surviving widow or widower and substituted the new language above set out.

1956—Section 1 of the act of July 2, 1956, cited to text, amended the section by adding the new matter above set out under (c).

1952—The act of Mar. 6, 1952, amended the section generally.

COMPILER'S NOTE

The proviso clause in this section which followed the first sentence in section (a) as amended by the act of March 6, 1952, 66 Stat. 17, ch. 95, § 4, was repealed by act of August 5, 1955, 69 Stat. 530, ch. 569, § 23, eff. July 1, 1955. The repealed matter read as follows: "Provided, That the exception of the computation of deferred annuities provided in section 31-729 no annual salary used in the computation of the average annual salary received during any five consecutive years of allowable service shall be less than the maximum salary for class 1, group A (established by sections 31-659 to 31-678), as it was in the year the salary was received, or \$4,330, whichever is greater."

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

RESTRICTIONS ON BENEFITS TO PERSONS RETIRING AFTER OCTOBER 1, 1956

Section 3 of the act of June 4, 1957, cited to text, provides as follows:

No person retiring subsequent to the effective date (October 1, 1956) of this Act (Classified to sections 31-721, 31-723, 31-724, 31-725, 31-726, 31-728, 31-729 and 31-733) and pursuant to its provisions shall be entitled to any benefits accruing by reason of the provisions of act of July 2, 1956, sections 31-725 and 31-740.

§ 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.

The annuities of all teachers retired prior to May 1, 1952, shall be recomputed in accordance with the provisions of section 31-724 within ninety days after March 6, 1952, retroactive to May 1, 1952, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided*, That the average annual salary during any five consecutive years, specified in section 31-724, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further*, That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Mar. 6, 1952, 66 Stat. 22, ch. 95, § 10.)

COMPILER'S NOTE

The date "May 1, 1952" was inserted in the section where reference was made to "the effective date of this Act." See note following section 31-721.

§ 31-726. Minimum credit—Restrictions.

The annuity of a teacher retiring under section 31-724 shall be at least (1) 40 per centum of the average salary or (2) the sum obtained under section 31-725 after increasing his total service by the period elapsing between the date of separation and the date he attains the age of sixty years, whichever is the lesser. (As amended Mar. 6, 1952, 66 Stat. 19, ch. 95, § 5; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—The act of June 4, 1957, cited to text, amended the section to read as above set out.

1952—The act of Mar. 6, 1952, substituted the words "sixty-two" for the word "sixty".

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

§ 31-727. Appropriations calculation.

The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay roll of all participants which shall be adequate to cover the liability normally accrued plus a further amount equal to the interest on the unfounded accrued liability. (As amended Mar. 6, 1952, 66 Stat. 19, ch. 95, § 6.)

AMENDMENTS

1952—The act of Mar. 6, 1952, amended the section by substituting the words "amount equal to the interest on the unfounded accrued liability" for the words "level amount computed to be sufficient to liquidate the unfounded accrued liability within a period of approximately fifty years after the effective date of this Act."

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

§ 31-728. Term of service—Reduction of Annuity—Contributions on leave—Monthly deposits.

The years of service which form the basis for determining the amount of the annuity provided in section 31-725 shall be computed from the date of original probationary appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided*, That the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further*, That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under the Civil Service Act of 1920, as amended; (d) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included, unless such retired pay is awarded on account of a service-connected disability (1) incurred in combat with an enemy of the United States or (2) caused by an in-

strumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1, or is awarded under title III of Public Law 810, Eightieth Congress; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637; and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to probationary appointment as a teacher in the public schools of the District of Columbia: *Provided, however*, That that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: *Provided further*, That no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to the accumulated contributions and interest which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31-721, but otherwise no provision of this Act shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31-632 to 31-637: *Provided further*, That if the teacher so elects, he may deposit the required sum in the fund in any number of monthly installments not exceeding fifty with interest at 3 per centum per annum compounded annually, upon making claim with the Auditor, District of Columbia, within one year of the effective date of sections 31-721 to 31-739, or within one year after the original probational appointment or reinstatement in the school service, or within two years after the date of honorable discharge from the military service: *And provided further*, That nothing contained herein shall be

construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of sections 31-721 to 31-740 as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under sections 31-721 to 31-740, except that such teacher shall not be considered as retaining his teaching position beyond six months after the date of the approval of this act¹ or the expiration of five years of such military service, whichever is later.

Nothing in sections 31-721 to 31-740 shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

AMENDMENTS

- 1957—Section 1 of the act of June 4, 1957, cited to text, struck out item (d) from the second sentence and inserted in lieu thereof item (d) as above set out. It also struck out the words "in time of war" in the fourth proviso and inserted the words "Air Force" after the word "Navy" in the same proviso. It also added as new matter the last two paragraphs of the section.
- 1955—Act of August 5, 1955, amended the second sentence of this section by inserting therein the matter beginning with "; and (f) down to Columbia."
- 1952—The act of March 6, 1952, amended the first sentence of the section generally. It also amended the second sentence by striking the following matter preceding the first proviso: "; and the first ten-year period to begin on the date of the first probationary appointment as a teacher in the public schools of the District of Columbia."

COMPILER'S NOTE

The date "May 1, 1952" was substituted in the section where reference was made to "the effective date of this Act". See note following section 31-721.

CROSS REFERENCE

See note under section 31-721.

INTERNAL REFERENCE

- Title III of Pub. L. 810, Eightieth Congress, referred to in this section was classified to the U. S. Code as follows: Title 10-1036 to 10-1036i; title 34-440h to 34-440q.
- The following table shows the disposition of former sections of title 10-1036 to 10-1036i and title 34-440h to 34-440q.

Former Title 10:		New Title 10	
Sec.		Sec.	
1036	-----	3966 (b),	8966.
1036a (a) (d)	-----	1331.	
1036a (b) (c)	-----	1332.	
1036a (e)	-----	676.	
1036b	-----	1401, 1333.	
1036c	-----	1001, 1334.	
1036d (in part)	-----	1336.	
1036e (c) (d)	-----	101, 1332, 1333.	
1036f	-----	Omitted.	
1036g	-----	1334, 1335.	
1036h	-----	1337.	
1036i	-----	Omitted.	

¹ The act referred to is the amendatory act of June 4, 1957, cited to text.

Former Title 34:

Sec.	Sec.
440h	6017.
440h-1	6323.
440i (a) (d)	1331.
440i (b) (c)	1332.
440i (e)	676.
440j	1333, 1401.
440k	1001, 1334.
440l	1001, 1336.
440m	101, 1332, 1333.
440n	6034.
440o	1334, 1335.
440p	1337.
440q	Omitted.

§ 31-729. Deferred annuity — Refunds — Deposit of amount withdrawn.

(a) Should any teacher to whom sections 31-721 to 31-739 apply, after having served in the public schools of the District of Columbia for a total period of not less than five years and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity beginning at the age of sixty-two years computed as provided in section 31-725: *Provided*, That any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or re-deposits with interest thereon, or any voluntary contributions made under the provisions of section 31-721, with interest: *Provided further*, That no teacher who shall withdraw the amount of his deductions, deposits, or re-deposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *And provided further*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 3 per centum compounded annually.

- (b) (1) In the event any teacher to whom sections 31-721 to 31-739 apply shall die subsequent to March 6, 1952, after having rendered at least five years of service in the public schools of the District of Columbia and is survived by a widow, or dependent widower, such widow or dependent widower shall be paid an annuity beginning the first day of the month following the death of the teacher, equal to one-half the amount of an annuity computed as provided in section 31-725 (a) with respect to such teacher: *Provided*, That such payments or any right thereto shall cease upon the death or remarriage of the widow, or dependent widower, or upon the widower's becoming capable of self-support.
- (2) In the event any teacher to whom sections 31-721 to 31-739 apply shall die subsequent to March 6, 1952, after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired subsequent to such date of enactment under section 31-723 or section 31-724, and is survived by a widow or dependent

widower and a child or children, such widow or dependent widower shall be paid an immediate annuity terminable upon death, remarriage, or attainment of age fifty. The annuity payable to the widow or dependent widower of such teacher shall be equal to one-half the amount of an annuity computed as provided in section 31-725 (a) with respect to such teacher. The annuity payable to the widow or dependent widower of such annuitant shall be equal to one-half the amount of the annuity, which such annuitant was receiving at the time of his death, excluding any portion thereof purchased by voluntary contributions under section 31-721, or, if such annuitant had elected a reduced annuity under the provisions of section 31-725 (b), one-half of the annuity which such annuitant would have received if he had not made such election.

(3) If any teacher to whom sections 31-721 to 31-740 apply shall die after completing five years of service in the public schools of the District of Columbia or after having retired under the provisions of section 31-723 or section 31-724 and is survived by a wife or husband, each surviving child who received more than one-half of his support from the teacher shall be paid an annuity equal to the smallest of (a) 40 per centum of the teacher's average salary divided by the number of children, (b) \$600, or (c) \$1,800 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 50 per centum of the teacher's average salary divided by the number of children, (b) \$720, or (c) \$2,160 divided by the number of children. The child's annuity shall begin on the first day of the month after the teacher dies and such annuity or any right thereto shall terminate upon (a) his attaining age eighteen unless incapable of self-support after age eighteen, (b) his becoming capable of self-support after age eighteen, (c) his marriage, or (d) his death. Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

(4) In the event any teacher to whom sections 31-721 to 739 apply shall die subsequent to March 6, 1952, after having rendered at least five years of service in the public schools of the District of Columbia, and is not survived by a widow, a dependent widower, and or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to one-half the amount of an annuity computed as provided in section 31-725 with respect to such teacher: *Provided*, That such payments shall be made jointly to surviving dependent parents and payment of said annuity shall continue after the death of either dependent parent: *Provided further*, That all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means an unmarried child, including a dependent stepchild or an adopted child, under the age of eighteen years, or such unmarried child who because of physical or mental disability is incapable of self-support.

(3) The term "dependent parents" means the natural parents of a teacher who were receiving one-half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term "dependent father" or "dependent mother" means the natural father or natural mother of a teacher who was receiving one-half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) The term "widower" means the surviving husband of a teacher who was married to such teacher for at least two years immediately preceding her death or is the father of issue by such marriage. The term "dependent widower" means a "widower" who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such teacher.

(6) Questions of dependency and disability arising under this section shall be determined by the Board of Education and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; as amended Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Section 1 of the act of June 4, 1947, cited to text, made the following amendments to this section:

(1) Struck out from subsection (a) the word "ten" and changed it to "five".

(2) Inserted after the word "widow" wherever same appeared in subsection (b), paragraphs (1) and (2), the words "or dependent widower".

(3) Struck from the first sentence of subsection (b), paragraph (1), the phrase "or following the widow's attainment of age fifty, whichever is later" and added at the end of the subsection the phrase "or upon the widower's becoming capable of self-support".

(4) Struck out the last two sentences of subsection (b), paragraph (2).

(5) Struck out paragraphs (3) and (4) of subsection (b) and inserted in lieu thereof a new paragraph (3) as set out above.

(6) Changed the number of paragraph (5) of subsection (b) to number (4) and struck from such paragraph the phrase "by a widow, widow and children or children" and inserted in lieu thereof the phrase "by a widow, a dependent widower, and or children".

(7) Changed the number of paragraph (5) of subsection (c) to number (6) and inserted a new paragraph (5) as set out above.

1952—The act Mar. 6, 1952, amended the section by adding subsections "(b)" and "(c)".

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

CROSS REFERENCE

See note under section 31-721.

§ 31-730. Beneficiaries—Death before retirement.

(a) Any teacher from whose salary retirement deductions are made in accordance with sections 31-721 to 31-739 may designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable, as hereinafter provided, in the event of the death of the teacher before or after retirement.

(b) In the event any teacher shall die before retirement leaving no survivor entitled to annuity benefits under the provisions of sections 31-721 to 31-739 the total amount of his deductions with interest thereon shall be paid, upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto.

(c) On the death of a retired teacher who elected to receive a reduced annuity with death benefits, the amount payable, if any, shall be determined according to the terms of the option so elected, and such amount shall be paid upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto.

(d) In the event that—

(1) a retired teacher shall die without a survivor entitled to benefits by subsection (b) of section 31-725 or subsection (b) of section 31-729, or

(2) a retired teacher shall die leaving a survivor or survivors entitled to such benefits and the right to benefits of all such survivors shall terminate before a valid claim therefor shall have been established, or

(3) the benefits of all persons entitled to benefits based upon the service of a teacher shall terminate, before the aggregate amount of the benefits paid equals the total amount credited to the individual account of such teacher with interest, to date of death or retirement of such teacher, whichever occurs first, the difference shall be paid, upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death or re-

tirement of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto. Any payment made by the Auditor under this section shall be a bar to a recovery by any other person. (As amended Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9.)

AMENDMENTS

1952—The act of Mar. 6, 1952, added subsection (d). The words "leaving no survivor entitled to annuity benefits under the provisions of sections 31-721 to 31-739" were added to subsection (b).

EFFECTIVE DATE OF AMENDMENT

See note following section 31-721.

§ 31-733. Definitions.

The term "teacher," under sections 31-721 to 31-739, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in sections 31-638 to 31-658, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun "his" occurs in sections 31-721 to 31-739 it shall be construed to mean both male and female; and the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in sections 31-638 to 31-658, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to the effective date of sections 31-721 to 31-739 from any teacher's "annual salary" as defined in the act of January 15, 1920, as amended.

The term "average salary" shall mean the largest annual rate resulting from averaging, over any period of five consecutive years of creditable service in the public schools of the District of Columbia, a teacher's rates of annual salary in effect during such period, with each rate weighted by the time it was in effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Section 1 of the act of June 4, 1957, cited to text, added the last sentence to the section.

§ 31-740. Waiver of annuity—Revocation.

Any person entitled to annuity pursuant to the provisions of sections 31-701—31-739, may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioners of the District of Columbia or their designated agent. Such waiver may be revoked in writing at any time, but

no payment of the annuity waived shall be made covering the period during which such waiver was in effect. (July 2, 1956, 70 Stat. 487, ch. 497, § 2.)

§ 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.

(a) The annuity of each retired employee who, on August 1, 1958, is receiving or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed \$500 per annum.

(b) The annuity otherwise payable from the District of Columbia teachers' retirement and annuity fund to—

(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, and

(2) each survivor of a retired employee described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed \$250 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 1.)

§ 31-742. Unremarried widow or widower entitled to annuity—Conditions—Amount—Termination.

The unremarried widow or widower of an employee—

(1) who had completed at least ten years of service creditable for retirement purposes under sections 31-721 to 31-739,

(2) who died before May 1, 1952, and

(3) who was at the time of his death (A) subject to an Act under which annuities granted before May 1, 1952, were or are now payable from the District of Columbia teachers retirement and annuity fund or (B) retired under such Act,

shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for a least five years immediately prior to his death and must be not entitled to any other annuity from the District of Columbia teachers retirement and annuity fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 2.)

§ 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.

(a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of section 31-741 shall take effect on August 1, 1958. An increase in

annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

(b) An annuity provided by section 31-742 shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received by the Commissioners of the District of Columbia or their designated agent, whichever occurs later.

(c) The monthly installment of each annuity increased or provided by sections 31-741 to 31-744 shall be fixed at the nearest dollar. (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 3.)

§ 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.

The annuities and increases in annuities provided by sections 31-741 to 31-743 shall be paid from the District of Columbia teachers retirement and annuity fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), (5 U. S. Code 2259 note) for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, sections 31-741 to 31-743 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by sections 31-741 to 31-743 for any fiscal year for which the Congress shall have made provisions for the payment of like annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218) (5 U. S. Code 2259 note). (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4.)

Chapter 8.—USE OF SCHOOL BUILDINGS

Sec.

31-812. Entrances to school buildings.

§ 31-812. Entrances to school buildings.

Appropriations for the District of Columbia shall not be used for the maintenance of school in any building unless all outside doors thereto used as exits or entrances shall open outward and be kept unlocked every school day from one-half hour before until one-half hour after school hours. (June 28, 1944, 58 Stat. 515, ch. 300, § 1.)

COMPILER'S NOTE

This section was omitted from prior editions of the Code.

Chapter 10.—GALLAUDET COLLEGE

Sec.

31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.

31-1026. Gallaudet College—Purposes.

Sec.

31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.

31-1028. Gifts of property to Gallaudet College.

31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.

31-1030. Powers of the Board of Directors.

31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education and Welfare.

31-1032. Appropriations.

§ 31-1001 [7: 211]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section concerned the establishment of the Columbia Institution for the Deaf, Dumb, and Blind, and was based upon the acts of Feb. 16, 1857, 11 Stat. 161, ch. 46, § 1; Feb. 23, 1865, 13 Stat. 436, ch. 50, § 1; R. S., § 4859; and Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1002 [7: 212]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section authorized the Columbia Institute for the Deaf to confer degrees, and was based upon the acts of April 8, 1864, 13 Stat. 45, ch. 52, and March 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1003 [7: 213]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to the obligatory nature of the terms of the deed of transfer of the funds and property of Washington's Manual Labor School and Male Orphan Asylum Society of the District of Columbia, as to the District of Columbia Institution for the Deaf, and was based upon R. S. § 4860 and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1004 [7: 214]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to the use and alienation of property of the Columbia Institution for the Deaf and was based on R. S., § 4862 and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1. Provisions covering the use and alienation of property are set out in section 31-1027.

§ 31-1005 [7: 215]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to management of the Columbia Institution for the Deaf and was based upon R. S. § 4862 and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1006 [7: 216]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to appointment of a senator and two representatives as directors of the Columbia Institution for the Deaf, and was based upon R. S., § 4863, and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1. Similar provisions are now included in section 31-1029.

§ 31-1007 [7: 217]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section concerned term of office of directors and the control by directors over appropriated moneys. The section was based on the acts of July 1, 1898, 30 Stat. 624, ch. 546, § 1 and June 10, 1921, 42 Stat. 24, ch. 18, § 305.

§ 31-1008 [7: 218]. Admission of deaf-mutes from District—Not an institution of charity.

NOTES TO DECISIONS

BOARD OF EDUCATION AND BOARD OF COMMISSIONERS—SUITS—INJUNCTIVE RELIEF

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. *Miller*

et al. v. Board of Education of District of Columbia et al. (1952, 106 F. Supp. 988).

INTENT OF CONGRESS

The Congressional intent in appropriating money for instruction of deaf persons in District of Columbia was that there should be separation of races in education of deaf children of District. *Miller et al. v. Board of Education of District of Columbia et al.* (1952, 106 F. Supp. 988).

NOT PART OF PUBLIC SCHOOL SYSTEM—RIGHT TO SUE AND BE SUED

The Columbia Institution for the Deaf is a private institution and is not part of the public school system of the District of Columbia and it has the right to contract and to sue and be sued, notwithstanding Congressional appropriation of money for education of deaf-mutes taught at the institution. *Miller et al. v. Board of Education of District of Columbia et al.* (1952, 106 F. Supp. 988).

OBLIGATIONS AND DUTIES

The only obligation of Columbia Institute for the Deaf is to educate deaf children who are approved by District of Columbia Superintendent of Schools and whose education is made the subject of a contract between the Institution and District Board of Commissioners, and failure of Institution to accept Negro deaf children who had not been approved by superintendent and whose education had not been made the subject of a contract was not breach of duty of obligation owing Negro children by institution, and hence Negro children seeking education in Institution could not obtain injunctive relief as against Institution or its directors. *Miller et al. v. Board of Education of District of Columbia et al.* (1952, 106 F. Supp. 988).

SEPARATE BUT EQUAL FACILITIES

The separate but equal facilities doctrine requires that Negro deaf children in District of Columbia be educated in District of Columbia as are white deaf children in the District, rather than in Maryland. *Miller et al. v. Board of Education of District of Columbia et al.* (1952, 106 F. Supp. 988).

§ 31-1009 [7: 219]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section made provision for instruction of feeble-minded applicants for admission to the Columbia Institution for the Deaf.

§ 31-1011 [7: 221]. Education of colored deaf-mute children of District.

NOTES TO DECISIONS

BOARD OF EDUCATION AND BOARD OF COMMISSIONERS—SUITS—INJUNCTIVE RELIEF

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§ 31-1012 [7: 222]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to the admission of students from States and territories, and was based on R. S. § 4865 and the acts of Mar. 4, 1911, 36 Stat. 1422, ch. 288, § 1; July 1, 1918, 40 Stat. 680, ch. 113, § 1; and June 24, 1935, 49 Stat. 394, ch. 286.

§ 31-1013 [7: 223]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section limited the number of pupils from one State or territory to be admitted to the Columbia Institution for the Deaf.

§ 31-1014 [7: 224]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section required a statement of the number of persons employed by the Columbia Institution for the Deaf and their compensation in the annual Budget, and was based on the acts of Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; and June 10, 1921, 42 Stat. 20, ch. 18, § 214.

§ 31-1015 [7: 225]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to the duties of judges of the municipal court as to reporting on deaf and dumb persons in the District. The section was based on R. S. § 4866 and the acts of Feb. 17, 1909, 35 Stat. 623, ch. 134 and Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1017 [7: 227]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to the annual report of the president and directors of the Columbia Institution for the Deaf to the Secretary of the Interior, and was based on R. S. § 4868 and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1018 [7: 228]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section provided for an itemized report of expenses of the Columbia Institution for the Deaf and was based on the acts of Mar. 3, 1883, 22 Stat. 625, ch. 143 and Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1019 [7: 229]. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section related to education of indigent blind persons and was based on R. S. § 4869 and the act of Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.

§ 31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.

The Columbia Institution for the Deaf, created a body corporate by the Act of Congress approved

February 16, 1857, as amended, is hereby continued as a body corporate under the name of Gallaudet College, and hereafter by such name shall be known and have perpetual succession and shall have the powers and be subject to the limitations contained in sections 31-1025 to 31-1032. (June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

§ 31-1026. Gallaudet College—Purposes.

The purposes of Gallaudet College shall be to provide education and training to deaf persons and otherwise to further the education of the deaf. (June 18, 1954, 68 Stat. 265, ch. 324, § 2.)

§ 31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.

(a) Gallaudet College is hereby invested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Gallaudet College shall also be subject to all liabilities and obligations now outstanding against said corporation under any former name.

(b) With the approval of the Secretary of Health, Education, and Welfare the Board of Directors of Gallaudet College may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all property title to which is vested in the United States, as trustee, for the sole use of Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation: *Provided*, That the proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but if invested only the income from the investment may be used for current expenses of the corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 3.)

§ 31-1028. Gifts of property to Gallaudet College.

Gallaudet College is authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of said Gallaudet College, or for the use of any of its departments or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for such purpose. (June 18, 1954, 68 Stat. 265, ch. 324, § 4.)

§ 31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.

Gallaudet College shall be under the direction and control of a Board of Directors, composed of thirteen members selected as follows: (1) Three public members of whom: one shall be a United States Senator appointed by the President of the Senate; two shall be Representatives appointed by the Speaker of the

House of Representatives; (2) ten other members, all of whom shall be elected by the Board of Directors, who on June 18, 1954 shall include those persons serving as nonpublic members of the Board of Directors of the Columbia Institution for the Deaf immediately prior to such date, and of whom one shall be elected pursuant to regulations of the Board of Directors on nomination by the Gallaudet College Alumni Association for a term of three years. The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed. The Board of Directors shall have the power to fill any vacancy in the membership of the Board except for public members. Seven directors shall be a quorum to transact business. The said Board of Directors, by vote of a majority of its membership, shall have power to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a director, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 5.)

§ 31-1030. Powers of the Board of Directors.

The Board of Directors shall have the power to—

(a) make such rules, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet College, for the management of the property and funds of such corporation and for the admission, instruction, care, and discharge of students;

(b) provide for the adoption of a corporate seal and for its use;

(c) fix the date of holding their annual and other meetings;

(d) appoint a president, professors, instructors, and other necessary employees for Gallaudet College, delegate to them such duties as it may deem advisable, fix their compensation, and remove them when, in their judgment, the interest of Gallaudet College shall require it;

(e) elect a chairman and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of five members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;

(f) establish such departments and other units, including a department of higher learning for the deaf, a department of elementary education for the instruction of deaf children, a graduate department, and a research department, as the Board deems necessary to carry out the purpose of Gallaudet College;

(g) confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(h) subject to the provisions of section 31-1031, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet College; and

(i) control the expenditure and investment of any moneys or funds or property which Gallaudet College may have or may receive from sources other than appropriations by Congress. (June 18, 1954, 68 Stat. 266, ch. 324, § 6.)

§ 31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.

(a) All financial transactions and accounts of the corporation in connection with the expenditure of any moneys appropriated by any law of the United States for the benefit of Gallaudet College or for the construction of facilities for its use, shall be settled and adjusted in the General Accounting Office.

(b) It shall be the duty of the Board of Directors of Gallaudet College to have made annually a report to the Secretary of Health, Education, and Welfare as soon as practicable after the first day of July of each year the condition of the corporation, embracing in said report the number of students of each description received and discharged during the preceding school year and the number remaining, also the branches and type of training and education taught and progress made therein, together with a statement showing the receipts of said corporation and from what sources, and its expenditures and for what objects. (June 18, 1954, 68 Stat. 266, ch. 324, § 7.)

§ 31-1032. Appropriations.

There are hereby authorized to be appropriated such sums as the Congress may determine necessary for the administration, operation, maintenance, and improvement of Gallaudet College, including sums necessary for student aid and research, for the acquisition of property, both real and personal, and for the construction of buildings and other facilities for the use of said corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 8.)

Chapter 11.—MISCELLANEOUS

Sec.

31-1117. Solicitation of donations from pupils—Authorization by Board of Education required.

§ 31-1117. Solicitation of donations from pupils—Authorization by Board of Education required.

No part of any appropriation for the District of Columbia shall be paid to any person employed under or in connection with the public schools of the District of Columbia who shall solicit or receive, or permit to be solicited or received, on any public-school premises, any subscription or donation of money or other thing of value from any pupil enrolled in such public schools for presentation of testimonials to school officials or for any purpose except such as may be authorized by the Board of Education at a stated meeting upon the written recommendation of the Superintendent of Schools. (July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

COMPILER'S NOTE

This section was omitted from previous editions of the Code.

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

§ 31-1301. Educational Agency for Surplus Property established—Functions and duties.

TRANSFER OF FUNCTIONS

All functions of the District of Columbia Educational Agency for Surplus Property including the functions of all officers, employees and subordinate agencies were transferred to Director Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. Reorganization Order No. 18 abolished the District of Columbia Educational Agency for Surplus Property and transferred its functions to the Administrative Services Office created in the Department of General Administration by that order. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the appendix to Title 1.

§ 31-1302. Working capital fund provided—Rules and regulations of Agency.

TRANSFER OF FUNCTIONS

See note under section 31-1301 concerning the District of Columbia Educational Agency for Surplus Property.

§ 31-1303. Termination of Agency.

TRANSFER OF FUNCTIONS

See note under section 31-1301 concerning the District of Columbia Educational Agency for Surplus Property.

Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

Sec.

31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

31-1402. Powers of the Board.

31-1403. Service credit for retirement deposits.

31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

31-1405. Appropriation authorized for maintenance and replacement of equipment and reimbursement of District Public School Food Services Fund—Conditions.

31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

31-1407. School-lunch program—Entitlement to funds under National School Lunch Act.

31-1408. Audits of accounts—Reports to Commissioners.

31-1409. Distribution of commodities.

31-1410. Appropriations in connection with distribution of commodities.

§ 31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

That there is hereby created in the public schools of the District of Columbia a Department of Food Services, which Department, under the direction and control of the Board of Education of the District of Columbia, hereinafter referred to as the "Board", is hereby authorized to conduct a centralized system of public school cafeterias, lunchrooms, and related services, hereinafter referred to as "food services". (Oct. 8, 1951, 65 Stat. 367, ch. 448, § 1.)

SHORT TITLE

Sec. 10 of the act of Oct. 8, 1951, cited to text, provided: "This title may be cited as the 'District of Columbia Public School Food Service Act'."

§ 31-1402. Powers of the Board.

For carrying out the purposes of this chapter, the Board is empowered—

(a) to establish in the Department of Food Services an Office of Central Management consisting of a Director and Assistant Directors of Food Services, whose compensation shall be fixed in accordance with 31-659 to 31-678;

(b) to make and enforce such rules and regulations as it deems necessary for the government of the Department of Food Services and for the use and enjoyment of the facilities and services of such department;

(c) upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management. The compensation of such personnel, other than the Director and Assistant Directors of Food Services, shall be fixed in accordance with the Classification Act of 1949 (chapter 21 of title 5 U. S. C.): *Provided*, That the salaries of persons employed to manage cafeterias, lunchrooms, and related services shall be paid in installments and computed in accordance with the provisions of the fourth and fifth paragraphs under the subheading "For allowance to principals" under the caption "Public schools" contained in sec. 31-609: *And provided further*, That such persons shall not be entitled to leave with pay of any kind except that which is allowed teachers under sections 31-691 to 31-697;

(d) upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services at rates of pay to be fixed by said Board without reference to the Classification Act of 1949 (chapter 21 of title 5 U. S. C.), and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any Act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than five days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay. Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of one day a month, September to June, inclusive, of each year, the total cumulation not to exceed thirty days, to be granted under such conditions as the Board may by regulation prescribe: *Provided*, That as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board;

(e) upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money which shall be deposited in the fund created by section 31-659¹, and of personal property and volunteer personal service. (Oct. 8, 1951, 65 Stat. 367, ch. 448, § 2.)

§ 31-1403. Service credit for retirement—Deposits.

Service rendered by any person for salary or wages as an employee of any cafeteria or lunchroom operated in the public school buildings of the District during any period prior to the date when such cafeteria or lunchroom is placed under the office of central management shall, if and when such person becomes an employee of the Department of Food Services, be deemed to be service rendered for the government of the District of Columbia for purposes of the Civil Service Retirement Act, approved May 29, 1930, as amended, to be computed in accordance with section 5 of such act: *Provided*, That such person shall make deposits covering such service as provided in section 9 of such act: *And provided further*, That any such person may elect to make such deposits in installments in accordance with the provisions of section 9 of such act. (Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1.)

COMPILER'S NOTE

1955—Act of August 5, 1955, 69 Stat. 536, § 1, revived the provisions of section 3 of the act of October 8, 1951, Public Law 159, Chapter 448, 65 Stat. 367, which was repealed by act of October 25, 1951, 65 Stat. 637, ch. 560, § 3. The said repealing act was likewise repealed by the act of August 5, 1955. The full text of the law is now set out in this section.

§ 31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

There is hereby created in the Treasury of the United States a fund to be known as "District of Columbia Public School Food Services Fund", hereinafter referred to as the "Food Services Fund", and there is authorized to be appropriated, out of the revenues of the District of Columbia, \$25,000 which shall be credited to the Food Services Fund. All revenues and receipts of any nature whatever derived from the operation of food services, or as provided otherwise by this chapter, shall, under regulations of the Board, be paid over to the Collector of Taxes of the District of Columbia not less often than once each week and by him deposited in the Treasury of the United States to the credit of the Food Services Fund. Such fund shall be used as a permanent revolving fund and expenditures therefrom shall be made only upon vouchers certified by the Superintendent of Schools or his designated agent and approved before payment by the auditor of the Dis-

trict of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed. The Food Services Fund shall be available for the purchase of foods, supplies, and all other services and expenditures of whatever nature which are necessary for the conduct of the Department of Food Services, including personal services, the operation and maintenance of motor trucks, and the expenses of conducting the Office of Central Management. (Oct. 8, 1951, 65 Stat. 369, ch. 448, § 5.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952.

The function of approving vouchers before payment as described in the foregoing section was transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 31-1405. Appropriation authorized for maintenance and replacement of equipment and reimbursement of District Public School Food Services Fund—Conditions.

Appropriations are hereby authorized for the acquisition, maintenance and replacement of equipment used or acquired for use in the conduct of the Department of Food Services in the public schools of the District of Columbia and for reimbursement of the District of Columbia Public School Food Services Fund for lunches served in accordance with section 9 of the National School Lunch Act (60 Stat. 233; title 42, sec. 1758, U. S. C., 1952 edition), to children without cost to such children or at reduced cost: *Provided*, That such reimbursement shall be made only in cases where such lunches are served to children of families who are recipients of public assistance granted by the government of the District of Columbia. The rate of such reimbursement for such lunches served by the public schools in the District of Columbia shall be the student price of "Type A Lunch" in effect at the time such lunches are served. As used in this section the term "Type A Lunch" means a Type A Lunch as defined in regulations promulgated by the Secretary of Agriculture pursuant to authority in the National School Lunch Act. Appropriations authorized by this section shall be available for reimbursement of the Food Service Fund in the amount of any agency contributions paid out of such Fund pursuant to the provisions of section 4 (a) of the Civil Service Retirement Act [5 U. S. Code 2254]. (Oct. 8, 1951, 65 Stat. 369, ch. 448, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85-901, § 1.)

AMENDMENTS

1958—Act of September 2, 1958, cited to text, amended the section by adding the matter relating to reimbursement for school lunches.

¹ The original act referred to: "Section 4 of this Act". Section 4 of the act is set out as § 31-659. Reference was probably intended to be to section 5 of the act which is set out as § 31-1404.

§ 31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

(a) All funds, whether in cash or other form, in the custody or possession of the person or persons operating cafeterias and lunchrooms in public school buildings of the District of Columbia which funds have been derived from such operations shall, on the date such cafeterias and lunchrooms are placed under the Office of Central Management, be paid to the Collector of Taxes, District of Columbia, and deposited by him in the Treasury of the United States to the credit of the Food Services Fund, and all supplies and equipment of whatever nature acquired for use in such cafeterias and lunchrooms shall, by the person or persons having custody or possession of such supplies and equipment, be returned or transferred to the Board of Education, together with all books and records pertaining to the same: *Provided*, That the Board of Education shall place all such cafeterias and lunchrooms under the Office of Central Management not more than one year after the Department of Food Services is established by said Board.

(b) All obligations incurred for food, supplies, and equipment used or usable in the conduct of cafeterias and lunchrooms unsatisfied on the day the respective cafeterias and lunchrooms are placed under the Office of Central Management, shall be paid from the Food Services Fund. (Oct. 8, 1951, 65 Stat. 369, ch. 448, § 7.)

§ 31-1407. School-lunch program — Entitlement to funds under National School Lunch Act.

Insofar as the Board shall conduct a school-lunch program under the authority of this chapter, it shall be considered a "school" within the meaning of the National School Lunch Act, and all funds to which it may thus become entitled as a participating school under the National School Lunch Act shall be deposited in the fund created by section 31-1404 hereof. (Oct. 8, 1951, 65 Stat. 370, ch. 448, § 8.)

COMPILER'S NOTE

The National School Lunch Act is set out as §§ 1751-1760 of title 42, U. S. C.

§ 31-1408. Audits of accounts—Reports to commissioners.

It shall be the duty of the auditor of the District of Columbia to audit at least quarterly the accounts of the Department of Food Services and make reports thereof to the Commissioners of the District of Columbia. (Oct. 8, 1951, 65 Stat. 370, ch. 448, § 9.)

§ 31-1409. Distribution of commodities.

The Board of Education of the District of Columbia is authorized (a) to enter into a contract or contracts from time to time with the United States Department of Agriculture for the distribution to schools and to public and charitable institutions of commodities made available by said Department, and (b) to carry out, under regulations of the said Board, a program or programs of furnishing milk to school children in the District, including the purchase and distribution of milk under agreement with the United States Department of Agriculture: *Provided*, That all moneys collected under such program or programs shall be paid to the Collector of Taxes of the District of Columbia for deposit into the Treasury of the United States to the credit of the District. (Oct. 8, 1951, 65 Stat. 370, ch. 448, § 201.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. The function of the quarterly audit and report to the Commissioners of the accounts of the Department of Food Services of the public schools of the District of Columbia was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 31-1410. Appropriations in connection with distribution of commodities.

Appropriations are hereby authorized to enable the Board of Education to carry out the contracts and programs authorized by this chapter. (Oct. 8, 1951, 65 Stat. 370, ch. 448, § 202.)

TITLE 32.—ELEEMOSYNARY, CURATIVE, AND PENAL INSTITUTIONS

Chapter 3.—HOSPITALS AND ASYLUMS— GENERAL PROVISIONS

Sec.

- 32-323. Conveyance of property to Columbia Hospital.
32-324. Restriction on use of property.
32-325. Creation of lien in favor of the United States.
32-326. Standards of indigency—Emergency patients.
32-327. Volunteer services in connection with medical services in Health Department.
32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.
32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.

§ 32-308 [8: 148]. Admission of pay patients to psychopathic ward of Gallinger Hospital.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective August 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new department. It further provided that within the department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Stella Calomeris Administratrix, etc. v. District of Columbia* (1955, 96 U. S. App. D. C. 364, 226 F. 2d 266).

Care for the indigent sick is a "governmental function". *Id.*

The District of Columbia government was not included in the Federal Tort Claims Act. *Id.*

§ 32-309 [8: 148a]. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Stella Calomeris administratrix, etc. v. District of Columbia* (1955, 96 U. S. App. D. C. 364, 226 F. 2d 266).

Care for the indigent sick is a "governmental function". *Id.*

The District of Columbia government was not included in the Federal Tort Claims Act. *Id.*

§ 32-310. Admission of pay patients to Tuberculosis Hospital.

NOTES TO DECISIONS

GOVERNMENT FUNCTION

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Stella Calomeris administratrix, etc. v. District of Columbia* (1955, 96 U. S. App. D. C. 364, 226 F. 2d 266).

Care of the indigent sick is a "governmental function". *Id.*

The District of Columbia government was not included in the Federal Tort Claims Act. *Id.*

§§ 32-314 [8: 153], 32-315 [8: 154]. Repealed June 28, 1952, 66 Stat. 288, ch. 486, § 4.

Section 4 (b) of the act provided "the repeals * * * shall not affect the current term of office of any trustee or director of the Columbia Hospital for Women and Lying-in Asylum appointed prior to the date of the enactment of this Act, and the existing directors and their successors shall have all the powers and authority of the original incorporators named in the Act of Incorporation of said hospital * * * and the power to fill vacancies on the board of directors".

§ 32-321. Availability of appropriations.

CROSS REFERENCE

Emergency cases and standards of indigency, § 32-326.

§ 32-322. Availability of appropriations to furnish medical services to non-indigent persons.

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Stella Calomeris administratrix, etc. v. District of Columbia* (1955, 96 U. S. App. D. C. 364, 226 F. 2d 266).

Care for the indigent sick is a "governmental function". *Id.*

The District of Columbia government was not included in the Federal Tort Claims Act. *Id.*

§ 32-323. Conveyance of property to Columbia Hospital.

Subject to the provisions of section 32-324, the Administrator of General Services and the Commissioners of the District of Columbia are directed to convey, without monetary consideration, to the Columbia Hospital for Women and Lying-in Asylum, Washington, District of Columbia, a corporation created by the Act of June 1, 1866 (14 Stat. 55), all right, title, and interest of the United States and of the District of Columbia in and to those pieces or parcels of land in the District of Columbia, described as follows, together with all improvements thereon and appurtenances thereto:

(a) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia and known as part of square numbered 25, as laid down and distinguished on the plat or plan of said city, as follows: Beginning at the southeast corner of said square and running thence north with Twenty-fourth Street two hundred and thirty-one feet and seven inches; thence west two hundred and thirty feet and six inches; thence north to M Street two hundred and thirty-one feet and ten inches; thence west with M Street two hundred and fifteen feet and six inches to Twenty-fifth Street; thence south with Twenty-fifth Street two hundred and sixty-three feet and five inches; thence east two hundred feet; thence south to L Street two hundred feet; thence east with L Street two hundred and forty-six feet to the beginning; and being the property conveyed to the United States of America by deed dated October 17, 1876, from the Columbia Hospital for Women and Lying-in Asylum, recorded in liber 836, folio 159, of the land records of the District of Columbia.

(b) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia on the northeast corner of L and Twenty-fifth Streets Northwest, being a part of original square numbered 25, as follows: Beginning at the southwest corner of said square and running thence east with the line of said L Street two hundred feet for a corner; thence north two hundred feet for a corner; thence west two hundred feet for a corner; and thence south two hundred feet to the place of beginning; containing forty thousand square feet of ground, more or less, and being the property conveyed to the United States of America by deed dated July 6, 1872, from the Columbia Hospital for Women and Lying-in Asylum and Edward Maynard, recorded in liber 811, folio 481 of the land records of the District of Columbia. (June 28, 1952, 66 Stat. 287, ch. 486, § 1.)

§ 32-324. Restriction on use of property.

The deed conveying the property described in the section 32-323 shall provide that no part of said property shall, without the consent of the United States, be devoted to any other purpose than a hospital for women. (June 28, 1952, 66 Stat. 288, ch. 486, § 2.)

§ 32-325. Creation of lien in favor of the United States.

The provisions of the paragraph following the appropriation for the Washington Hospital for Foundlings in section 32-1003, creating a lien in favor of the United States with respect to the appropriations referred to therein, shall also apply to the appropriations in the aggregate amount of \$50,000, granted in the Act of June 10, 1872 (17 Stat. 360), and in the Act of March 3, 1875 (18 Stat. 386), for the purchase by the United States of the property described in the section 32-323, and the acceptance by the Columbia Hospital for Women and Lying-in Asylum of the conveyance of said property shall be deemed an acceptance of and agreement to this provision. (June 28, 1952, 66 Stat. 288, ch. 486, § 3.)

§ 32-326. Standards of indigency—Emergency patients.

The Commissioners of the District of Columbia shall establish from time to time reasonable standards of indigency for admission of patients to municipal hospitals of the District of Columbia: *Provided*, That emergency and semi-indigent patients may be admitted to the general ward and tuberculosis ward of Gallinger Municipal Hospital on a full- or part-pay basis at such rates and under such regulations as may be established by the Commissioners insofar as such admissions will not interfere with the admission of indigent patients: *Provided further*, That the Commissioners may enter into agreements with the States of Maryland and Virginia, or the political subdivisions thereof, for the care and treatment in such municipal hospitals of emergency patients who are indigent residents of such States or political subdivisions. (June 27, 1942, 56 Stat. 441, ch. 452, § 1.)

COMPILER'S NOTE

This section was omitted from previous editions of the Code.

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Stella Calomeris administratrix, etc. v. District of Columbia* (1955, 96 U. S. App. D. C. 364, 226 F. 2d 266).

Care for the indigent sick is a "governmental function". *Id.*

The District of Columbia government was not included in the Federal Tort Claims Act. *Id.*

§ 32-327. Volunteer services in connection with medical services in Health Department.

The Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the maintenance of medical services in the Health Department. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning the Health Department.

§ 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.

The Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the operation of the Glenn Dale Tuberculosis Sanatorium. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

§ 32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.

The Commissioners may, without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the operation of

Gallinger Municipal Hospital and the Tuberculosis Hospital. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32-406a. Patients of District of Columbia or Federal Government—Payments for care—Accounting.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective August 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1952 are set out in the appendix to Title I.

§ 32-408. Authorization to accept gifts.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator referred to in the above section was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorganization Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective April 11, 1953 by act of April 1, 1953, 67 Stat. 18, ch. 14, § 1.

§ 32-411. Authorization to accept gifts—Gifts of real property.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator referred to in the above section was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorganization Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective April 11, 1953 by act of April 1, 1953, 67 Stat. 18, ch. 14, § 1.

§ 32-412. Admission of applicants.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective August 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1952 are set out in the appendix to Title I.

§ 32-414. Costs of board, medical care, and treatment.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective August 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1952 are set out in the appendix to Title I.

§ 32-415. Regulations—Approval of Federal Security Administrator.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator referred to in the above section was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorganization Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective April 11, 1953 by act of April 1, 1953, 67 Stat. 18, ch. 14, § 1.

§ 32-416. Regulations relating to Board of Public Welfare—District of Columbia.

TRANSFER OF FUNCTIONS

See notes under sections 32-406a, 32-412, and 32-414.

Chapter 7A.—AID TO DEPENDENT CHILDREN

§ 32-751. Congressional declaration—Establishment of system of aid to dependent children.

INSTRUCTIONS TO JURY

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, jury was entitled to consider all evidence bearing on general plan or scheme of defendant to defraud the Department of Public Welfare, though jury was erroneously limited by trial court's ruling to finding only that plan continue for initial two months after trial court directed a verdict for defendants on counts 3 through 35 of the information. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PATTERN OF CONDUCT

Statute providing that any adult person who attempts to obtain, or obtains or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance for aid to dependent children, or who receives for benefit of any child, any allowance knowing it to have been fraudulently obtained, shall, on conviction, be subject to fine or imprisonment or both, penalizes a pattern of conduct rather than a series of acts which manifests the pattern, and information with several counts relating to receipt of several monthly payments alleged to have been fraudulently obtained from Department of Public Welfare charged only a single crime. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PLAIN ERROR

Where defendants contended for first time in their brief on their appeal that entry into their house by investigators was illegal because made without a search warrant and that consequently evidence thereby obtained, including admission of one of the defendants, should have been suppressed in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, and defendants gave no evidence at the trial concerning such incident, and failure to raise the question below left record almost devoid of evidence of any sort bearing on the contention, there was no "plain error" on such an inclusive and sketchy record, and therefore reviewing court would decline to entertain the contention on appeal. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

REVERSAL IN PART

Where defendants were found guilty on two counts of information in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, though offense was not multiple but single, reviewing court would not reverse convictions outright, but would affirm one conviction. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

SUFFICIENCY OF EVIDENCE

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, evidence was sufficient to corroborate admission of one of the defendants. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191)

§ 32-752. Definitions.

NOTES TO DECISIONS

INSTRUCTIONS TO JURY

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, jury was entitled to consider all evidence bearing on general plan or scheme of defendant to defraud the Department of Public Welfare, though jury was erroneously limited by trial court's ruling to finding only that plan continue for initial two months after trial court directed a verdict for defendants on counts 3 through 35 of the information. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191)

PATTERN OF CONDUCT

Statute providing that any adult person who attempts to obtain, or obtains or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance for aid to dependent children, or who receives for benefit of any child, any allowance knowing it to have been fraudulently obtained, shall, on conviction, be subject to fine or imprisonment or both, penalizes a pattern of conduct rather than a series of acts which manifests the pattern, and information with several counts relating to receipt of several monthly payments alleged to have been fraudulently obtained from Department of Public Welfare charged only a single crime. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

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Where defendants contended for first time in their brief on their appeal that entry into their house by investigators was illegal because made without a search warrant and that consequently evidence thereby obtained, including admission of one of the defendants, should have been suppressed in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, and defendants gave no evidence at the trial concerning such incident, and failure to raise the question below left record almost devoid of evidence of any sort bearing on the contention, there was no "plain error" on such an inclusive and sketchy record, and therefore reviewing court would decline to entertain the contention on appeal. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

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Where defendants were found guilty on two counts of information in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, though offense was not multiple but single, reviewing court would not reverse convictions outright, but would affirm one conviction. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

SUFFICIENCY OF EVIDENCE

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, evidence was sufficient to corroborate admission of one of the defendants. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

§ 32-754. Administration by Board of Public Welfare—Rules and regulations—Reports.

INSTRUCTIONS TO JURY

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, jury was entitled to consider all evidence bearing on general plan or scheme of defendant to defraud the Department of Public Welfare, though jury was erroneously limited by trial court's ruling to finding only that plan continue for initial two months after trial court directed a verdict for defendants on counts 3 through 35 of the information. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PATTERN OF CONDUCT

Statute providing that any adult person who attempts to obtain, or obtains or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance for aid to dependent children, or who receives for benefit of any child, any allowance knowing it to have been fraudulently obtained, shall, on conviction, be subject to fine or imprisonment or both, penalizes a pattern of conduct rather than a series of acts which manifests the pattern, and information with several counts relating to receipt of several monthly payments alleged to have been fraudulently obtained from Department of Public Welfare charged only a single crime. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PLAIN ERROR

Where defendants contended for first time in their brief on their appeal that entry into their house by investigators was illegal because made without a search warrant and that consequently evidence thereby obtained, including admission of one of the defendants, should have been suppressed in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, and defendants gave no evidence at the trial concerning such incident, and failure to raise the question below left record almost devoid of evidence of any sort bearing on the contention, there was no "plain error" on such an inclusive and sketchy record, and therefore reviewing court would decline to entertain the contention on appeal. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

REVERSAL IN PART

Where defendants were found guilty on two counts of information in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, though offense was not multiple but single, reviewing court would not reverse convictions outright, but would affirm one conviction. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

SUFFICIENCY OF EVIDENCE

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, evidence was sufficient to corroborate admission of one of the defendants. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

§ 32-765. Penalty for obtaining or receiving allowance by false misrepresentation, fraud, or deceit.

NOTES TO DECISIONS

INSTRUCTIONS TO JURY

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, jury was entitled to consider all evidence bearing on general plan or scheme of defendant to defraud the Department of Public Welfare, though jury was erroneously limited by trial court's ruling to finding only that plan continue for initial two months after trial court directed a verdict for defendants on counts 3 through 35 of the information. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PATTERN OF CONDUCT

Statute providing that any adult person who attempts to obtain, or obtains or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance for aid to dependent children, or who receives for benefit of any child, any allowance knowing it to have been fraudulently obtained, shall, on conviction, be subject to fine or imprisonment or both, penalizes a pattern of conduct rather than a series of acts which manifests the pattern, and information with several counts relating to receipt of several monthly payments alleged to have been fraudulently obtained from Department of Public Welfare charged only a single crime. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

PLAIN ERROR

Where defendants contended for first time in their brief on their appeal that entry into their house by investigators was illegal because made without a search warrant and that consequently evidence thereby obtained, including admission of one of the defendants, should have been suppressed in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, and defendants gave no evidence at the trial concerning such incident, and failure to raise the question below left record almost devoid of evidence of any sort bearing on the contention, there was no "plain error" on such an inclusive and sketchy record, and therefore reviewing court would decline to entertain the con-

tention on appeal. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

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SUFFICIENCY OF EVIDENCE

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, evidence was sufficient to corroborate admission of one of the defendants. *E. Blackmone and N. Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

Sec.

32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioners.

32-790. Compensation for services in connection with child placement.

32-791. "Commissioners" defined—Delegation of functions.

§ 32-783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.

Within sixty days after June 8, 1954, the Commissioners shall appoint, after consultation with the Department of Public Welfare, a committee to formulate and adopt rules and regulations, subject to the approval of the Commissioners, prescribing standards of placement, care, and services to be required of child-placing agencies, pursuant to the intent and purposes of this chapter. The committee shall be composed of two representatives of the Department of Public Welfare of the District of Columbia, one of whom shall act as chairman, a member of the staff of the Department of Health of the District of Columbia, two representatives from each of the charitable organizations of the District of Columbia licensed to place children in family homes, a member of the legal profession, and a member of the medical profession. The terms of office of each member of the committee shall be three years, except that—

"(1) the terms of office of the members first taking office shall expire, as designated by the Commissioners at the time of appointment, approximately one-third at the end of one year, approximately one-third at the end of two years, and approximately one-third at the end of three years, after June 8, 1954;

"(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(3) upon the expiration of his term of office a member shall continue to serve until his successor is appointed and has qualified.

The rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies shall be reviewed by the committee annually and, subject to the approval of the

Commissioners, may be amended when deemed necessary." (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3; June 8, 1954, 68 Stat. 246, ch. 273, § 1.)

AMENDMENTS

1954—The act of June 8, 1954, amended the section by increasing the representatives from the Department of Public Welfare from 1 to 2, and providing for 2 representatives from each of the charitable organizations of the District licensed to place children in homes. The amendment also provided for 1 representative from both the legal and medical professions, and for staggered terms for the members of the committee.

Section 7 of the act of June 8, 1954 provided that this amendment would take effect on the date of enactment of the act.

§ 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

An application for a license as a child-placing agency shall be made to the Commissioners on forms provided by them and in the manner prescribed. Before such license is issued the Board of Public Welfare shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Board is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, said Board shall recommend to the Commissioners that a license be issued.

A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Commissioners upon recommendation of the Board of Public Welfare.

All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than three successive years. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4; June 8, 1952, 68 Stat. 247, ch. 273, § 2.)

AMENDMENTS

1954—The act of June 8, 1954, struck the words "from the date of the passage of this Act" from the last sentence of the section. [The words deleted from the section as contained in the D. C. Code were "from the date of the passage of sections 32-781 to 32-789".] This amendment has the effect of giving permanent authority to the Commissioners to issue provisional licenses of a duration not to exceed 3 successive years.

Section 7 of the act provided that this amendment would take effect four months after June 8, 1954.

§ 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency.

No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care,

custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child-welfare agency or terminated by the order of a court of competent jurisdiction.

Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child: *Provided*, That legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

Records which are deemed confidential shall not be available for inspection by nor disclosed to any person, firm, corporation, association, or public agency, except that such records shall be available for inspection by authorities authorized by law to license child-placing agencies. Such records shall not be subject to judicial subpoena in collateral proceedings, except that the licensed child-placing agency and the Commissioner in accordance with rules and regulations promulgated hereunder, may make such records, or any information contained in such records, available (1) when the Commissioners or such agency determines that any information contained in such records shall promote or protect the interest and welfare of any child the Commissioners or such agency has served, and (2) for the purpose of research if adequate safeguards are taken against the disclosure or publication in any manner of the identity of any person contained in such records." (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5; June 8, 1954, 68 Stat. 247, ch. 273, § 3.)

AMENDMENTS

1954—The act of June 8, 1954, amended the section by eliminating from the last paragraph provisions relating to prohibited compensation and substituting a new paragraph concerning confidential records.

Section 7 of the act provided that these amendments would take effect four months after June 8, 1954.

§ 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioners.

Notwithstanding the provisions of this chapter, the Commissioners are authorized to enter into agreements with any person, firm, corporation, association, or public agency licensed or authorized by a State or country for the care and placement of minors, permitting such person, firm, corporation, association, or public agency to place nonresident children in foster or adopting homes in the District of Columbia. The Commissioners shall act pursuant to regulations promulgated as provided in section 32-783 of this chapter. (Apr. 22, 1944, 58 Stat. 193, § 5A, as added June 8, 1954, 68 Stat. 247, ch. 273, § 4.)

AMENDMENTS

1954—The act of June 8, 1954, amended the original child placement act of April 22, 1944, by the addition of

a new section 5A. This section has been included in the D. C. Code as section 32-785a.

Section 7 of the act of June 8, 1954, provided that the amendment would take effect four months after June 8, 1954.

§ 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency. Any relinquishment of parental rights other than by court order as provided in this subsection may be revoked upon the written consent of all the parties to said relinquishment and any such relinquishment may be transferred from one licensed child-placing agency to another licensed child-placing agency, in which case the second agency shall assume all the rights and duties of the first agency. For the purposes of this section, 'licensed child-placing agency' shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any State, Territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors. Such transfer or relinquishment shall be filed in the domestic relations branch of the municipal court for the District of Columbia, as hereinafter provided in this section. Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under sixteen years of age unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness. Said relinquishment of parental rights shall be recorded and filed in a properly sealed file in the domestic relations branch of the municipal court for the District of Columbia. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said court.

(b) The Commissioners or their designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquish-

ment taken by the Commissioners or their designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5, April 11, 1956, 70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 1.)

AMENDMENTS

1959—Section 1 of the act of August 21, 1959, amended subsection to read as above set out.

1956—Section 107 (c) of the act of April 11, 1956, Public Law 486, ch. 204, 70 Stat. 112, struck out "Office of the Clerk of the District Court of the United States for the District of Columbia", and "Office of the Clerk of the United States District Court for the District of Columbia" and inserted in lieu of each such phrase "Domestic Relations Branch of the Municipal Court for the District of Columbia".

1954—The act of June 8, 1954, amended the section by deleting the second sentence and by inserting in lieu thereof additional provisions relating to relinquishment of a child to a licensed agency as therein defined. The amendment provided that the minority of a parent would not be a bar to relinquishment of a child to a licensed agency.

The act added section (b) and made the original section, as amended, section (a).

Section 7 of the act provided that these amendments would take effect four months after June 8, 1954.

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see sections 11-758 to 11-770.

EFFECTIVE DATES

1956—Section 115 of the act of April 11, 1956, cited to text, make all sections [except sections 105, 106 and 107, classified to secs. 11-764, 11-765, and 16-416, 16-210, 16-220 and 32-786] effective upon its approval. Sections 105, 106 and 107 are made effective thirty days after the appointment and qualification of the three additional judges authorized by section 103 (a) [§ 11-752].

§ 32-790. Compensation for services in connection with child placement.

Neither the Commissioners nor any child-placing agency authorized to perform services in connection with placing a child in a family home for adoption may make or receive any charge or compensation whatsoever for such services, except that a licensed child-placing agency which is organized and operated exclusively for religious or charitable purposes and no part of the net earnings of which can inure to the benefit of any private shareholder or individual, may be allowed to charge adoptive parents, within prescribed limits, for such services an amount not to exceed the average costs incurred; such average costs and prescribed limits to be determined in accordance with rules and regulations promulgated by the committee created by section 32-783. Inability of adoptive applicants to pay for all or any part of such costs shall not be a disqualifying factor in determining whether applicants are suitable parents for the child. (April 22, 1944, ch. 174, § 12, as added June 8, 1954, 68 Stat. 248, ch. 273, § 6.)

EFFECTIVE DATE

Section 7 of the act provided that this amendment would take effect four months after June 8, 1954.

§ 32-791. "Commissioners" defined—Delegation of functions.

As used in this chapter, the term "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agents. The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). (Apr. 22, 1944, ch. 174, § 13, as added Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 2.)

Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

Sec.

- 32-908a. Commitments to National Training School stopped—New commitments to be made to Board of Public Welfare—Parole or discharge—Care of girls at institutions or private homes.
- 32-908b. Availability of buildings, grounds, equipment and appropriations for care and training of children.

§ 32-908. [8:218]. Girls committed—Commitment by court or judge.

Whenever any girl under the age of seventeen years shall be brought before any court of the District of Columbia or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment other than imprisonment for life, such court or judge, in lieu of sentencing her to imprisonment in the jail or fining her, may commit her to the Board of Public Welfare. Except as otherwise provided in sections 11-909 and 11-910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, first, any girl under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia or any law that may be enacted and in force in said District; second, any girl under seventeen years of age, with the consent of her parent or guardian, against whom any charge of crime or misdemeanor shall have been made, upon probable cause shown to the satisfaction of the court; third, any girl under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; fourth, any girl under seventeen years of age who is incorrigible or habitually disregards the commands of her father or mother or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to her years and condition or to attend school. Girls committed to the Board of Public Welfare may be committed for such periods as the courts may deem proper, subject to earlier discharge by the Board of Public Welfare, but no girl shall be so committed for a period extending beyond her twenty-first birthday. (As amended Aug. 3, 1951, 65 Stat. 154, ch. 291, § 3.)

AMENDMENTS

1951—Section 3 of the act of Aug. 3, 1951, amended the section by striking out "Reform School for Girls"

and substituting in lieu thereof "Board of Public Welfare"; by deleting from the first sentence the words: "to remain until she shall arrive at the age of twenty-one years unless sooner discharged by the Board of Public Welfare", and by adding the last sentence.

CROSS REFERENCE

See § 32-908a discontinued commitments to the National Training School.

§ 32-908a. Commitments to National Training School stopped—New commitments to be made to Board of Public Welfare—Parole or discharge—Care of girls at institutions or private homes.

No girl shall be committed to the National Training School for Girls after the enactment of this section. Any girl who, but for the provisions of such section, would be subject to commitment to such school shall be subject to commitment to the Board of Public Welfare (hereinafter called the "Board"). Girls committed to such school prior to the enactment of this section shall remain subject to the supervision and care of the Board for the periods of their commitments, but may be removed by it to any other place of detention available to it. The Board is authorized to parole or discharge any girl com-

mitted to it or subject to its supervision as provided in this section. In the supervision and care of any girl the Board is authorized, in its discretion, to use any public or private agency or institution, or private family home, either without expense or at a fixed rate of board. (Aug. 3, 1951, 65 Stat. 154, ch. 291, § 1.)

§ 32-908b. Availability of buildings, grounds, equipment and appropriations for care and training of children.

The buildings, grounds, and equipment of the National Training School for Girls shall be available for the care and training of children committed to the Board or received and accepted by it for care under the authority of this or any other section. Appropriations heretofore or hereafter made for the National Training School for Girls shall be available for the care and training of such children. (Aug. 3, 1951, 65 Stat. 154, ch. 291, § 2.)

§ 32-910. Release on parole of juvenile offenders committed.

CROSS REFERENCE

See also parole and discharge provisions in § 32-908a.

TITLE 33.—FOOD AND DRUGS

Chap.	Sec.	
6. Transferred.		
7. Regulation and Control of Certain Drugs Other Than Narcotics.....		33-701

Chapter 1.—ADULTERATION

§ 33-111. Special services for detection of adulteration.

Amounts to be determined by the Commissioners may be expended for special services in detecting adulteration of drugs and foods, including candy and milk and other products and services subject to inspection by the Department of Public Health. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1; July 1, 1954, 68 Stat. 383, ch. 449, § 1.)

REPEATED

- Act July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
- Act August 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
- Act June 27, 1957, 71 Stat. 197, Pub. L. 85-61, § 1.
- Act June 29, 1956, 70 Stat. 445, ch. 479, § 1.
- Act July 5, 1955, 69 Stat. 251, ch. 272, § 1.
- Act July 1, 1954, 68 Stat. 383, ch. 449, § 1.
- Act July 31, 1953, 67 Stat. 284, ch. 299, § 1.
- Act July 5, 1952, 66 Stat. 380, ch. 576, § 1.

COMPILER'S NOTE

The act of July 1, 1954, substituted "Department of Public Health" for "Health Department".

Prior to the 1951 act similar provisions in annual appropriation acts had specified a fixed amount which could be expended.

Chapter 3.—MILK, CREAM, AND ICE CREAM

§ 33-318 [20: 1268]. Milk and cream to be received only from licensed shippers.

NOTES TO DECISIONS

CONSTRUCTION

Section of Milk Act providing that no person in District of Columbia, licensed under act, shall receive any milk or cream from any source until he shall have first ascertained from health department that person from whom milk is obtained holds license from Director of Public Health of District of Columbia to send milk or cream into District of Columbia does not prohibit importation of milk, which is sold outside District of Columbia. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 93 U. S. App. D. C. 364, 211 F. 2d 41).

§ 33-319 [20: 1269]. Penalties—Prosecution.

NOTES TO DECISIONS

JURISDICTION OF DISTRICT COURT

In action by dairy company against Commissioners of District of Columbia and Director of Health for declaratory and injunctive relief challenging order of commissioners requiring District of Columbia inspection and licensing under Milk Act in connection with processing of milk brought into District of Columbia for processing, though milk is destined for sale to consumers outside District of Columbia, allegations of complaint stated cause for equitable relief, which federal District Court of District of Columbia had jurisdiction to entertain. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 93 U. S. App. D. C. 364, 211 F. 2d 41).

Chapter 4.—UNIFORM NARCOTIC DRUG ACT

Sec.	33-416a.	Vagrancy—Narcotic drug user—Penalties—Conditions imposed.
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§ 33-401 [6: 345]. Definitions.

(n) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, and opiate, and every substance not chemically distinguishable from them, and any compound, manufacture, salt, derivative, or preparation of coca leaves, opium, cannabis, isonipecaine, or opiate, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(o) "Federal narcotic laws" means the laws of the United States and the regulations promulgated thereunder relating to opium, coca leaves, cannabis, and other narcotic drugs.

* * * * *

(t) "Isonipecaine" and "opiate" shall have the same meaning as that given to such terms by section 4731 of the Internal Revenue Code of 1954. [26 U. S. C. 4731] (As amended July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (a).)

AMENDMENTS

Section 301 (a) of the act of July 24, 1956, cited to text, amended subsections (n) and (o) to read as above set out and also by adding new subsection (t) thereto.

§ 33-402 [6: 345a]. Acts declared unlawful.

(a) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter.

(b) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of subsection (a) hereof by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such subsection at the time of his arrest.

(c) No evidence discovered in the course of any such arrest, search, or seizure authorized by subsection (b) hereof, shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating the provisions of this section. (June 20, 1938, 52 Stat. 787, ch. 532, § 2; as amended July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (b).)

AMENDMENTS

Section 301 (b) of the act of July 24, 1956, cited to text, amended the section by adding "a" at the beginning of the section and also by adding two new subsections as above set out.

CROSS REFERENCE

Presence or employment in illegal establishments. § 22-1514.

§ 33-405 [6: 345d]. Use of official written orders.

An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be unlawful for a manufacturer or wholesaler to sell, barter, exchange, or give away any preparation or remedy described in section 4702 of the Internal Revenue Code of 1954 [26 U. S. C. 4702], which contains not more than two grains of opium, or not more than one-fourth of a grain of morphine, or not more than one-eighth of a grain of heroin, or not more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, except in pursuance of a written order, on a form to be issued in blank by the District of Columbia Board of Pharmacy. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid preparations shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer or agent authorized for that purpose.

The Board of Pharmacy shall cause suitable written order forms to be prepared for the purchase of narcotics for which no form is provided by the United States Commissioner of Narcotics, and shall cause the same to be for sale by said board at cost, to those persons who shall have registered under the federal narcotic laws. The Board of Pharmacy shall keep an account of the number of forms sold and the names and addresses of the purchasers and the serial numbers of such forms sold to each purchaser. Whenever the Board of Pharmacy shall sell any such forms it shall cause the name and address of the purchaser thereof to be plainly written or stamped thereon before delivering the same. The said board is authorized and directed to make such rules and regulations, not inconsistent with law, as it may deem necessary for the administration and enforcement of this chapter.

It shall be deemed a compliance with this section if the parties to the transaction have complied with the Federal narcotic laws respecting official order forms if such order forms are authorized and required by Federal laws, or, if no such order form is required by Federal law and if no such order form is available for purchase as provided in the preceding paragraph of this section, then the parties to the transaction shall comply with the rules and regulations made pursuant to this chapter respecting official order forms and such other records as may be required. (June 20, 1938, 52 Stat. 787, ch. 532, § 5; as amended July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (c).)

AMENDMENTS

Section 301 (c) of the act of July 24, 1956, cited to text amended the section generally to read as above set out.

§ 33-408 [6: 345g]. Sales by apothecaries.

(a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed, in ink or indelible pencil, on the day when issued, by the physician, dentist, or veterinarian prescribing said narcotic drugs. The prescription when issued shall also state the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription.

(b) An apothecary, in good faith, may sell and dispense on oral prescription of a physician, dentist, or veterinarian such narcotic drugs or compounds thereof as are found by the Secretary of the Treasury or his delegate, pursuant to section 4705 (c) (2) of the Internal Revenue Code of 1954 [26 U. S. C. 4705], to possess relatively little or no addiction liability. The oral prescription shall be reduced to a written record by the apothecary before filling, with said written record containing the same information as is required by law or regulation in the case of a written prescription except for the requirement of the written signature of the prescriber.

(c) A written prescription or a written record of an oral prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

(d) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(e) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per centum of the complete solution, to be used for medical purposes. (June 20, 1938, 52 Stat. 789, ch. 532, § 8; as amended July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (d).)

AMENDMENTS

Section 301 (d) of the act of July 24, 1956, cited to text, redesignated subsections (b) and (c) as (d) and (e), struck out the last two sentences in subsection (a), and inserted subsections (b) and (c) as above set out.

§ 33-409 [6: 345h]. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, or he may cause the same to be admin-

istered by a nurse or interne under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the physician or dentist shall furnish the apothecary with the same information as is required by law or regulation in the case of a written prescription for narcotic drugs and compounds, except for the requirement of the written signature of the prescriber.

(b) Veterinarians.—A veterinarian, in good faith and in the course of his professional practice only and not for use by a human being, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal; the species of the animal for which the narcotic is prescribed; and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the veterinarian shall furnish the apothecary with the same information as is required by law in the case of a written prescription for narcotic drugs and compounds, except for the written signature of the prescriber.

(c) Nothing contained in subsections (a) and (b) of this section shall be construed as authorizing an oral prescription to be furnished by the physician, dentist, or veterinarian to the apothecary, for a narcotic drug or compound other than those narcotic drugs or compounds determined by the Secretary of the Treasury, or his delegate, pursuant to the provisions of section 4705 (c) (2) of the Internal Revenue Code of 1954, to possess little or no addiction liability.

(d) Return of unused drugs.—Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient. (June 20, 1938, 52 Stat. 790, ch. 532, § 9; as amended July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (e) (f) (g).)

AMENDMENTS

Section 301 (e) (f) and (g) of the act of July 24, 1956, cited to text, amended the section generally as above set out.

§ 33-410 [6: 345i]. Preparations e x e m p t e d—Conditions—Paregoric.

Except as otherwise in this chapter specifically provided, said sections shall not apply to the following cases:

(a) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce or, if a solid or semisolid preparation, in one avoirdupois ounce (1) not more than two grains of opium, (2) not more than one-quarter of a grain of morphine or of any of its salts, (3) not more than one grain of codeine or of any of its salts, (4) not more than one-eighth of a grain of heroin or of any of its salts, (5) not more than one-sixth of a grain of dihydrocodeinone or any of its salts.

(b) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

(c) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation containing not in excess of 25 per centum of paregoric, in combination with some drug or drugs which confer upon it medicinal properties other than those possessed by paregoric.

The exemptions authorized by this section shall be subject to the following conditions:

(1) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold to any person, or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Manufacturers or wholesalers shall sell tincture opii camphorata, commonly known as paregoric, only in accordance with the provisions of sections 33-405, 33-406, on official written order forms provided for that purpose by the Board of Pharmacy. It shall be unlawful for any person to bring into or have in his possession for sale in the District of Columbia any paregoric unless an official written order form has been issued therefor. No person shall dispense or sell any paregoric at retail to any person without a written or oral prescription from a duly licensed physician, dentist, veterinarian, or other duly authorized person. Prescriptions shall be retained and filed as provided in section 33-408. (June 20, 1938, 52 Stat. 790, ch. 532, § 10; as amended July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301(h); Aug. 25, 1959, 73 Stat. 430, Pub. L. 86-206, § 1.)

AMENDMENTS

1959—Act of August 25, 1959, amended last paragraph of section by striking out words, "without a written prescription" and inserting in lieu thereof the words, "without a written or oral prescription".

Section 301 (h) of the act of July 24, 1956, cited to text, amended subsection (a) by adding the matter following the numeral (5) and by adding subsection (c) thereto and by striking out in the third sentence of the last paragraph "without a prescription" and inserting in lieu thereof "without a written prescription".

§ 33-411 [6:345j]. Records to be kept—Form—Preservation.

(e) Form and preservation of records.—The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or cocoa leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received, or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. (June 20, 1938, 52 Stat. 791, ch. 532, § 11; as amended July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (i).)

AMENDMENTS

Section 301 (i) of the act of July 24, 1956, cited to text, amended subsection (e) by striking out the last sentence thereof.

§ 33-412 [6:345k]. Labels.

(a) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a written or oral prescription under this chapter, shall alter, deface, or remove any label so affixed.

(b) Whenever an apothecary sells or dispenses any narcotic drug on a written or oral prescription issued by a physician, dentist, or veterinarian he shall affix to or place in the container in which such drug is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the

name and address of the owner of the animal, and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed as long as any of the original contents remain. (June 20, 1938, 52 Stat. 792, ch. 532, § 12; as amended July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (j).)

AMENDMENTS

Section 301 (j) of the act of July 24, 1956, cited to text, amended the second sentence of subsection (a) by striking out "a prescription" and inserting in lieu thereof "a written or oral prescription", also amended the first sentence of subsection (b) by striking out "a prescription" and inserting in lieu thereof "a written or oral prescription" and by striking out "affix to" and inserting in lieu thereof "affix to or place in".

§ 33-414 [6:345m]. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.

* * * * *

(h) The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night. (As amended July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (k).)

AMENDMENTS

Section 301 (k) of the act of July 24, 1956, cited to text, amended subsection (h) to read as above set out.

NOTES TO DECISIONS

SUBJECT OF SEARCH

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst of rubble, and although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (1954, 122 F. Supp. 664.)

§ 33-416 [6:345o]. Common nuisances.

CROSS REFERENCE

Presence or employment in illegal establishments. § 22-1514.

NOTES TO DECISIONS

EVIDENCE

In prosecution for violation of narcotics law, admission of testimony of officer that he found capsules of heroin hydrochloride on ground outside house and beneath open window of second story apartment where defendant and other persons were assembled, was not grounds for reversal, where there was nothing in record to show that any objection was made to such evidence. *Melvina O'Neal v. United States of America* (1955, 95 U. S. App. D. C. 386, 222 F. 2d 411).

There may be a conviction under nuisance statute of keeping a place resorted to by narcotic addicts for purpose of using narcotics, but not of keeping a place used for illegal keeping or selling of such drugs, without proof that narcotics had been kept on premises. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

The statute declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does

not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. *United States v. Williams* (1953, 93 U. S. App. D. C. 120, 210 F. 2d 687).

NEW TRIAL

Under statute defining as nuisance a place resorted to by narcotic addicts for purpose of using narcotics, or used for illegal keeping or selling of narcotics, where there was no evidence that narcotics had been kept on premises, but jury were led to believe that they might find defendant guilty of violating either or both provisions of statute, by argument of prosecuting attorney and by trial court's reading entire statute to jury without attempting to differentiate the two features of the statute, and where it could not be determined upon which feature verdict of guilty was based, conviction could not stand and would be reversed for new trial. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

PROBABLE CAUSE FOR ARREST

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 101 U. S. App. D. C. 198, 247 F. 2d 784).

PROOF OF PRESENCE OF NARCOTIC DRUGS

The statute declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. *United States v. Williams* (1953, 93 U. S. App. D. C. 120, 210 F. 2d 687).

SEARCH AND SEIZURE

In prosecution for violation of narcotics statute, trial judge properly denied defendant's motion to suppress evidence on ground of illegal arrest and subsequent search of premises, where articles which defendant desired to be suppressed for use as evidence were not enumerated or described in motion, and where they were not identified at hearing on motion. *Melvina O'Neal v. United States of America* (1955, 95 U. S. App. D. C. 386, 222 F. 2d 411).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights, and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States* (D. C. Mun. App. 1954, 105 A. 2d 739; aff'd 222 F. 2d 411).

WARRANT OF ARREST

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States of America* (D. C. Mun. App. 1954, 105 A. 2d 739; aff'd 222 F. 2d 411).

§ 33-416a. Vagrancy—Narcotic Drug User—Penalties—Conditions imposed.

(a) The purpose of this section is to protect the public health, welfare, and safety of the people of the District of Columbia by providing safeguards for the people against harmful contact with narcotic drug users who are vagrants within the meaning of this section and to establish, in addition to the Hospital Treatment for Drug Addicts Act for the District of Columbia, further procedures and means for the care and rehabilitation of such narcotic drug users.

(b) For the purpose of this section—

(1) the term "vagrant" shall mean any person who is a narcotic drug user or who has been convicted of a narcotic offense in the District of Columbia or elsewhere and who—

(A) having no lawful employment or visible means of support realized from a lawful occupation or source, is found mingling with others in public or loitering in any park or other public place and fails to give a good account of himself; or

(B) is found in any place, abode, house, shed, dwelling, building, structure, vehicle, conveyance, or boat, in which any illicit narcotic drugs are kept, found, used, or dispensed; or

(C) wanders about in public places at late or unusual hours of the night, either alone or in the company of or association with a narcotic drug user or convicted narcotic law violator, and fails to give a good account of himself; or

(D) is included within one of the classes of persons defined in paragraphs (1) through (9), inclusive, of section 22-3302;

(2) the term "narcotic drug user" shall mean any person who takes or otherwise uses narcotic drugs, except a person using such narcotic drug as a result of sickness or accident or injury, and to whom such narcotic drugs are being furnished, prescribed, or administered in good faith by a duly licensed physician in the course of his professional practice.

(c) Whenever any law-enforcement officer has probable cause to believe that any person is a vagrant within the meaning of this section, he is authorized to place that person under arrest and to confine him in any place in the District of Columbia designated by the Commissioners thereof.

(d) Pending arraignment and without unnecessary delay the person arrested as a vagrant within the meaning of this section shall have the opportunity to be examined by a physician designated by the Commissioners of the District of Columbia, who shall determine whether there is evidence of narcotic drug usage.

(e) If the physician designated by the Commissioners of the District of Columbia is satisfied that the person examined is not a narcotic drug user, or if there is insufficient evidence of narcotic drug usage, the United States Attorney shall, if the said person is not otherwise chargeable as a vagrant within the meaning of this section, bring such matter to the attention of the Corporation Counsel for the District of Columbia for determination as to

whether there shall be a prosecution under the provisions of section 22-3302.

(f) Upon affirmative determination that the person arrested is a narcotic drug user, or if the person has been convicted of a narcotic offense in the District of Columbia or elsewhere, and if such person is also a vagrant as hereinbefore defined, he shall be charged with the offense of vagrancy within the meaning of this section and arraigned in the United States branch of the municipal court, where the prosecution shall be conducted in the name of the United States by the United States attorney.

(g) Any person convicted of being a vagrant under the provisions of this section shall be punished by fine of not more than \$500 or imprisonment for not more than one year, or by both such fine and imprisonment.

(h) The court, in sentencing any person found guilty under the provisions of this section, may in its own discretion or upon the recommendation of the probation officer, impose conditions upon the service of any such sentence. Conditions thus imposed by the court may include submission to medical and mental examination, and treatment by proper public health and welfare authorities; confinement at such place as may be designated by the Commissioners of the District of Columbia, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant.

(i) In all prosecutions under the provisions of this section, the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (July 24, 1956, 70 Stat. 420, ch. 676, title III, § 301 (l).)

AMENDMENTS

Section 301 (l) of the act of July 24, 1956, cited to text, added the new section above set out.

EFFECTIVE DATE

1956—Section 304 of the act of July 24, 1956, cited to text, provides that subsection (1) of section 301 classified as 33-416a shall take effect thirty days after the date of its enactment.

NOTES TO DECISIONS

CONSTITUTIONALITY

The statute defining "vagrant" as any person who is a narcotic drug user or who has been convicted of narcotic offense and who, having no lawful employment, etc., is found mingling with other narcotic users, etc., which places the burden upon such defendant to show that he has lawful employment or lawful means of support, as construed to require the government first to prove preliminary elements of offense before placing burden of proof upon defendant, is not unconstitutional as restricting a defendant's freedom of movement in stating with whom he can or cannot associate, since the statute does not unreasonably interfere with any citizen's freedom of movement or association. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

EVIDENCE

In vagrancy prosecution under statute defining "vagrant" as one who is a narcotic drug user or who has been convicted of narcotic offense, evidence was sufficient for jury on issue of defendant's guilt. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

IDENTITY OF NAMES

In vagrancy prosecution wherein the government was required under statute to prove that defendant was "a narcotic drug user or [one] who has been convicted of a narcotic offense", record of defendant's drug-act conviction was not improperly admitted because his character was not in issue and though there was no verbal testimony that he was the same "William Jenkins" named in certified record of conviction the identity of names will be accepted as prima facie evidence of identity of persons. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

PROOF

In vagrancy prosecution under statute defining "vagrant", as one who is a narcotic drug user or one who wanders around in company with narcotic drug user or convicted narcotic law violator, failure to show that defendant knew that the three men with whom he was found were drug users or convicted drug law violators did not preclude conviction, since statute makes no reference to guilty knowledge and it would be wrong for courts to require such proof in such a case. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

RECORD ON APPEAL

On appeal from judgment of conviction under statute defining a "vagrant" as a narcotic user, etc., who among other things associates with narcotic users or narcotic law violators, where jury charge was not in record and no error had been assigned with reference thereto, Court of Appeals would assume that in instructing jury judge covered the matter of defendant's alleged lack of knowledge that associates were narcotic law violators accurately and satisfactorily. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

"VAGRANCY" DEFINED

"Vagrancy" is a status or condition declared wrong by law, and punishment is directed against one who places himself in such status. *W. Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

§ 33-417 [6: 345p]. Forfeiture by unlawful possession—Disposition.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of a peace officer shall be delivered promptly to the Secretary of the Treasury or his delegate for disposal in accordance with the provisions of section 4733 of the Internal Revenue Code of 1954 [26 U. S. C. 4733], except that narcotic drugs which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any Federal narcotic law shall, upon delivery to the Secretary of the Treasury, not be so disposed of until the United States attorney for the District of Columbia or any assistant United States attorney shall certify that such narcotic drugs are no longer needed as evidence. (As amended July 24, 1956, 70 Stat. 621, ch. 676, title III, § 301 (m).)

AMENDMENTS

Section 301 (m) of the act of July 24, 1956, cited to text, amended the section to read as above set out.

§ 33-423 [6: 345v]. Penalties.

Any person violating any provision of this chapter, or any regulation made by the Commissioners of the District of Columbia, under authority of its sections, for which no specific penalty is otherwise provided, shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than

\$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment. (As amended July 24, 1956, 70 Stat. 622, ch. 676, title III, § 301 (n).)

AMENDMENTS

Section 301 (n) of the act of July 24, 1956, cited to text, amended the section to read as above set out.

Chapter 6.—RESTAURANTS

§ 33-601. Transferred.

This section was transferred to section 47-2905.

§ 33-602. Transferred.

This section was transferred to section 47-2906.

§ 33-603. Transferred.

This section was transferred to section 47-2907.

§ 33-604. Transferred.

This section was transferred to section 47-2908.

§ 33-605. Transferred.

This section was transferred to section 47-2909.

§ 33-606. Transferred.

This section was transferred to section 47-2910.

§ 33-607. Transferred.

This section was transferred to section 47-2911.

Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

Sec.

- 33-701. Definitions.
- 33-702. Prohibited Acts.
- 33-703. Drugs exempted.
- 33-704. Exemption of persons.
- 33-705. Records.
- 33-706. Inspection.
- 33-707. Regulations.
- 33-708. Penalties.
- 33-709. Search warrants.
- 33-710. Arrests without warrant.
- 33-711. Forfeiture.
- 33-712. Separability clause.

§ 33-701. Definitions.

For the purposes of this chapter—

(1) The term “dangerous drug” means—

(A) amphetamine, desoxyephedrine, or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof which have a stimulating effect on the central nervous system, except preparations intended for use in the nose and unfit for internal use;

(B) barbituric acid, also known as malonylurea, and its salts and derivatives, and compounds, preparations, and mixtures thereof;

(C) other drugs or compounds, preparations, or mixtures thereof which the Commissioners shall find and declare by rule or regulation duly promulgated, after reasonable public notice and opportunity for a hearing to be habit-forming, excessively stimulating, or to have a dangerously toxic, or hypnotic or somni-

ficient effect on the body of a human or animal; except that the term “dangerous drug” shall not include any drug the manufacture or delivery of which is regulated by Federal narcotic drug laws, or by the narcotic drug laws of the District of Columbia.

(2) The terms “delivery” and “furnish” mean the selling, dispensing, giving away, sampling, or supplying in any other manner.

(3) The term “patient” means, as the case may be—

(A) the individual for whom a dangerous drug is prescribed, administered, or supplied in the course of professional practice for a legitimate medical purpose; or

(B) the owner or the agent of the owner of the animal for whom a dangerous drug is prescribed or to which or on which a dangerous drug is administered or used in the course of professional practice for a legitimate medical purpose.

(4) The term “person” includes any corporation, partnership, association, or one or more individuals, acting either as principal or agent.

(5) The term “practitioner” means any person duly licensed by appropriate authority and, in conformance with the law, licensed to prescribe dangerous drugs, and to administer and use dangerous drugs in the course of his professional practice.

(6) The term “pharmacist” means a person duly licensed as a pharmacist pursuant to title 2, chapter 6 of this code.

(7) The term “prescription” means a written or oral order by a practitioner to a pharmacist for a dangerous drug for a particular patient, which specifies the date of issue, the name and address of the patient (and, in the case of prescription for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, the directions for use of such drug, and in case of a written order, the signature and office address of such practitioner, and in the case of an oral order, the District of Columbia or State registration number and office address of such practitioner (and if the practitioner be a member of the Armed Forces of the United States, then he shall give his rank, serial number, and station). Each oral order by a practitioner for a dangerous drug must be promptly reduced to writing by the pharmacist.

(8) The term “hospital” means an institution or dispensary or clinic for the care and treatment of the sick and injured, approved by the Commissioners as proper to be entrusted with the custody of dangerous drugs and the professional use of dangerous drugs under the direction of a physician, dentist, or veterinarian.

(9) The term “laboratory” means a laboratory approved by the Commissioners as proper to be entrusted with the custody of dangerous drugs and their use for medical and scientific purposes, and for purposes of instruction.

(10) The term “manufacturer” means a person or persons, other than pharmacists and practitioners who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by

mixing, compounding, encapsulating, entableting, or other process, or who repackage such drugs.

(11) The term "wholesaler" means a person or persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in subdivisions (A) and (D), inclusive, of section 33-704.

(12) The term "drug salesman" or "manufacturer's representative" means any person who, acting in the course of his regular duties, calls upon or visits practitioners or pharmacists in the interest of demonstrating, selling, or detailing the use and sale of dangerous drugs.

(13) The term "warehouseman" means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them, and who has no control over the disposition of such drugs except for the purpose of such storage.

(14) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a board, or their designated agent or agents. (July 24, 1956, 70 Stat. 612, ch. 676, title II, § 202.)

POPULAR NAME

Section 201 of the act of July 24, 1956, cited to text, provides as follows: "This title may be cited as the 'Dangerous Drug Act for the District of Columbia'".

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

CROSS REFERENCE

For rehabilitation of users of narcotics see sections 24-601 to 24-615.

For provisions of Uniform Narcotic Drug Act see sections 33-401 to 33-425.

§ 33-702. Prohibited acts.

(a) Except as otherwise provided by sections 33-703 and 33-704, the following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful:

(1) The delivery of any dangerous drug unless—

(A) such dangerous drug is delivered by a pharmacist, upon a prescription, and there is affixed to the immediate container of such or in which such drug is delivered a label bearing (i) the name and address of the owner of the establishment from which such drug was delivered; (ii) the date on which the prescription for such drug was filled; (iii) the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; (iv) the name of the practitioner who prescribed such drug; (v) the name and address of the patient, and if such drug was prescribed for an animal, a statement of the species of the animal; and (vi) the directions for the use of the drug, as contained in the prescription; or

(B) such dangerous drug is delivered to a practitioner by a pharmacist for his professional use in his practice; in which case the pharmacist may deliver the drug without affixing any additional label to the original package of such drug and must immediately record such sale and delivery by filing a suitable record of such sale and delivery in the pre-

scription file as maintained for prescriptions for such drugs; or

(C) such dangerous drug is delivered by a manufacturer's representative or drug salesman to a practitioner in the course of calling upon the practitioner; in which case the manufacturer's representative or drug salesman shall immediately record, in a suitable bound notebook (i) the name and quantity of the drug delivered, (ii) the date such drug was delivered, and (iii) the name and address of the practitioner to whom the drug was delivered; or

(D) such dangerous drug is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, if such drug is prescribed for an animal, a statement of the species of the animal.

(2) The refilling of any prescription for a dangerous drug except as designated on the prescription, or by the consent of the practitioner.

(3) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required by section 33-705.

(4) The possession of a dangerous drug by any person, unless such person obtained such drug on the prescription of a practitioner or in accordance with subparagraph (D) of paragraph (1) of this subsection.

(5) The making or uttering by any person of any false or forged prescription, or false or forged written order for the purpose of obtaining any dangerous drug.

(6) The delivery of any dangerous drug to any person in the District of Columbia not lawfully entitled to receive such drug.

(7) The willful making of or concealment of any material false statement or representation in any prescription, order, report, or record required by this title.

(8) The refusal to make available and to accord full opportunity to check any record or file as required by section 33-706.

(9) The failure to keep records as required by subsections (a) and (b) of section 33-705.

(10) The using by any person to his own advantage, or the revealing, other than to any officer of the Metropolitan Police Department of the District of Columbia in the performance of his official duties, the Commissioners, acting pursuant to authority vested in them, or to a court when relevant in a judicial proceeding under this title, of any information required under the authority of section 33-706, concerning any method or process which as a trade secret is entitled to protection.

(b) Nothing in this section shall be construed to relieve any person with respect to dangerous drugs, from any requirement prescribed by or under the authority of sections 502 and 503 (b) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U. S. C. 352, 353 (b)). (July 24, 1956, 70 Stat. 613, ch. 676, title II, § 203.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-703. Drugs exempted.

Nothing in this chapter shall apply to a compound, mixture, or preparation which is delivered or acquired in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this title if—

(1) such compound, mixture, or preparation of barbituric acid, its salts and derivatives shall be declared by rule or regulation duly promulgated by the Commissioners after reasonable public notice and opportunity for hearing to have or to contain no habit-forming properties and not to have a dangerously toxic or hypnotic or somnifacient effect on the body of a human or animal; or

(2) such compound, mixture, or preparation of amphetamine, desoxyephedrine, phenylethylamine, or their salts or derivatives shall be found and declared by rule or regulation duly promulgated by the Commissioners after reasonable public notice and opportunity for hearing to contain in addition to such drug or its salts and derivatives some other drug or drugs causing it to possess other than an excessively stimulating effect upon the central nervous system and to have no habit-forming properties or dangerously toxic effect upon the body of a human or animal. (July 24, 1956, 70 Stat. 614, ch. 676, title II, § 204.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-704. Exemption of persons.

The provisions of subparagraphs (1) (A) and (1) (D) and paragraph (4) of section 33-702 (a) shall not be applicable (1) to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to agents or employees of such persons, for use in the normal or usual course of their business or practice or in the performance of their official duties, as the case may be; or (2) to the possession of dangerous drugs by such persons or their agents or employees for such use:

(A) Pharmacists.

(B) Practitioners.

(C) Persons who procure dangerous drugs (i) for handling by or under the supervision of pharmacists or practitioners, or (ii) for the purpose of lawful research, teaching, or testing and not for resale.

(D) Hospitals which procure dangerous drugs for lawful administration or use by practitioners.

(E) Laboratories which procure dangerous drugs for lawful medical and scientific purposes.

(F) Officers or employees of appropriate enforcement agencies of Federal, State, District of Columbia, or local governments, pursuant to their official duties.

(G) Manufacturers and wholesalers.

(H) Manufacturers' representatives and drug salesmen.

(I) Carriers and warehousemen.

(July 24, 1956, 70 Stat. 615, ch. 676, title II, § 205.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-705. Records.

(a) Persons (other than carriers and practitioners) listed in paragraphs (A) through (I) of section 33-704 shall—

(1) make, within thirty days after the effective date of this title, and biennially thereafter, a complete record of all stocks of dangerous drugs on hand, such records to be held for a period of two years, and

(2) retain all such commercial or other records, including invoices, relating to dangerous drugs received or maintained by them in the course of their business or occupation, or as required by this title, for not less than two calendar years immediately following the date of such record.

(b) Pharmacists shall, in addition to complying with the provisions of subsection (a) hereof, retain each prescription or notation of sale to practitioners for a dangerous drug received by them, for not less than two calendar years immediately following the date of the filling of the order or prescription and a complete record of each refilling of such prescription. (July 24, 1956, 70 Stat. 615, ch. 676, title II, § 206).

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-706. Inspection.

Prescriptions, orders and records, required by section 33-705, and stocks of dangerous drugs shall be opened for inspection—

(1) upon written request, to any officer or employee duly designated by the Commissioners at all reasonable hours for the purpose of inspection and copying; and, any person upon whom such request is served shall accord to such officer or employee full opportunity to check the correctness of such files or records, including the opportunity to make inventory of all stocks of dangerous drugs on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness, or

(2) to District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States, relating to dangerous drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, in which such prescriptions, orders, or records may be pertinent. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 207.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-707. Regulations.

The Commissioners are hereby authorized to promulgate necessary regulations for the administration and enforcement of this chapter. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 208.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-708. Penalties.

(a) Any person violating any provision of this chapter, or of any regulation made by the Commissioners under the authority of this title shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment; and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment.

(b) The conviction of any person for a violation of this chapter, or of any regulation made under the authority of this title, involving any dangerous drug shall constitute ground for suspension or revocation or denial of renewal of the professional license of such person. Proceedings for such suspension or revocation or denial of renewal shall be had in accordance with the statutes relating to the issuance, revocation, suspension, and denial of renewal of such licenses and in accordance with statutes relating to judicial review of administrative action in connection with the revocation, suspension, or denial of renewal of such licenses.

(c) As used in this section the term "professional license" means a license issued under the following sections: 2-101 to 2-140, 2-301 to 2-331, 2-401 to 2-411, 2-601 to 2-617, 2-701 to 2-719, and 2-801 to 2-812. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 209.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-709. Search warrants.

(a) A search warrant may be issued upon probable cause, supported by affidavit particularly describing the property to be seized and place to be searched, by any judge of the municipal court for the District of Columbia or by the United States Commissioner for the District of Columbia, to any officer of the Metropolitan Police Department when any dangerous drugs are manufactured, possessed, prescribed, and delivered in violation of the provisions of this chapter, and any such dangerous drugs and any other property designed for use in connection with such unlawful manufacturing, possession, prescribing, or delivery, may be seized thereunder and shall

be subject to such disposition as the court may make thereof, and such dangerous drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) Any search warrant issued in accordance with the provisions of subsection (a) of this section may be served at any time in the day or night and must be executed and returned to the issuing authority within ten days after its date. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 210.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-710. Arrests without warrant.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of any of the provisions of section 33-702 by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such section at the time of his arrest.

(b) No evidence discovered in the course of any such arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested, unless at the time of such arrest he was violating section 33-702. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 211.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-711. Forfeiture.

Any dangerous drug seized pursuant to any lawful search or which may have come into the custody of any peace officer, the lawful possession of which cannot be established or the title to which cannot be ascertained, shall be forfeited and destroyed in the same manner provided for narcotic drugs in section 17 of the Uniform Narcotic Drug Act, approved June 20, 1938 (52 Stat. 794; D. C. Code, section 33-417), as amended. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 212.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

§ 33-712. Separability clause.

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (July 24, 1956, 70 Stat. 618, ch. 676, title II, § 213.)

EFFECTIVE DATE

1956—Section 214 of the act of July 24, 1956, cited to text, provides as follows: "This title shall take effect ninety days after the date of its enactment."

TITLE 35.—INSURANCE

Chapter 1.—INSURANCE DEPARTMENT— GENERAL PROVISIONS

§ 35-101 [5: 171]. Department of Insurance created—
Superintendent of Insurance—Subject to super-
vision of Commissioners.

TRANSFER OF FUNCTIONS

Reorganization Order No. 43 established under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

§ 35-203 [5: 183]. Copy of application to be delivered
with policy—Statements in application as defense.

NOTES TO DECISIONS

DEFENSE ON ORAL APPLICATION

In action on industrial life policy declaring that it expressed the entire agreement between the parties, a defense open to insurer if no written application existed was not precluded by the statute and the insurer could defend on violation of policy provisions having no relation to the application. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

In action on an industrial life policy declaring that it expressed the entire agreement between the parties, where insurer used testimony of the agent as to answers given or evaded by claimant to prove bad faith in making an application for the policy and questions relating to policy provisions that had no relation to the application not attached to the policy, a defense based on such questions and on the claimant's responses thereto would not be disallowed under the statute. *Id.*

FAILURE TO ATTACH WRITTEN APPLICATION

Where voidability provision of life policy required company to prove that applicant had received medical treatment, but insurer did not attach written application, if any, to policy, insurer could not defend on account of anything contained in or omitted from application, and was barred from declaring policy void on account of alleged nondisclosure in application. *William H. Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

Chapter 3.—LIFE INSURANCE ACT— DEFINITIONS

§ 35-301 [5: 216]. Short title—Application of law.

NOTES TO DECISIONS

NAVY MUTUAL AID ASSOCIATION

The Navy Mutual Aid Association formed to aid families of deceased members, by providing a substantial sum for

their relief at as near actual net cost of insurance as possible, and by securing for them without cost, pensions to which they may be entitled, was subject to the provisions of the Life Insurance Act but not subject to the tax on insurance companies. *Fechtelor et al. v. Jordan, Jordan v. The Navy Mutual Aid Association* (1955, 95 U. S. App. D. C. 54, 218 F. 2d 865).

§ 35-302 [5: 216a]. Definitions.

In chapters 3-8 of this title, unless the context otherwise requires—

* * * * *

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Numbered 5 of 1952 (as amended, July 16, 1953, 67 Stat. 172, ch. 196, § 2).

* * * * *

AMENDMENTS

1953—Act of July 16, 1953 changed the definition of "Superintendent."

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-404 [5: 217c]. Certificate of authority—Effect—Is-
suanee.

It shall be the duty of the Superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The Superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the Superintendent, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the thirtieth day of April next succeeding the date of its issuance. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section and no company shall transact any business of insurance not specified in such certificate of authority. (Feb. 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1)

AMENDMENT

1958—Section 1 of the act of February 22, 1958, Pub. L. 85-334, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN
NUMBERS OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-405 [5:217d]. Revocation of certificate of authority—Notice.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of chapters 3—8, or which—

- (a) is impaired in capital or surplus;
- (b) is insolvent;
- (c) is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors or to the public;
- (d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;
- (e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;
- (f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;
- (g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;
- (h) fails to file with the Superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;
- (i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;
- (j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or
- (k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded

the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section, after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes of the District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Feb. 22, 1958, 72 Stat. 20, Pub. L. 85-334, § 2.)

AMENDMENTS

1958—Section 2 of the act of February 22, 1958, Pub. L. 85-334, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION
PLAN NUMBERS OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-416 [5:217o]. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

Reorganization Order No. 23 transferred the functions relating to the delivery of securities required to be deposited by insurance companies transacting business in the District of Columbia from the Secretary of the Board of Commissioners and the Auditor of the District to the Internal Audit Officer or his deputy and the Disbursing Officer or his deputy, Department of General Administration. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the appendix to Title 1.

§ 35-423 [5:217v]. Appointment of superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

NOTES TO DECISIONS

CONGRESSIONAL POWER

Congress, legislating for the District of Columbia, has power to protect the interest of District residents for

whom out of town companies write insurance policies, and such protective legislation is effective even though it may have repercussions beyond the geographical boundaries of the District. *Security National Life Insurance Co. v. Beatrice B. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

CONSTITUTIONALITY OF LAW

Statute providing that every foreign company soliciting, selling, or writing insurance on any resident of District of Columbia through medium of United States mails can be served by service upon District Superintendent of Insurance is constitutional and does not violate due process of law requirements. *Security National Life Insurance Co. v. Beatrice B. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

SERVICE OF PROCESS ON SUPERINTENDENT OF INSURANCE

Where an individual certificate of insurance was mailed to insured, although master policy of group insurance plan was delivered in Missouri to representative of association having group policy, and premiums were paid to association, and association mailed check to insurer, insurer was subject to substituted service in action by beneficiary on policy by service upon Superintendent of Insurance of District of Columbia under statute providing that every foreign company soliciting, selling, or writing insurance on any resident of the District through medium of United States mails may be served by service upon Superintendent. *Security National Life Insurance Co. v. Beatrice B. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

§ 35-426 [5:217y]. Suspension or revocation of license—Grounds for—Notice of—Hearing—Penalty.

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any misleading representations or incomplete or fraudulent comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force; or has made any misleading estimate of the dividends or share of surplus to be received on a policy; or has failed or refused to pay or to deliver to the company or to his principal any money or other property in the hands of said general agent, agent, solicitor, or broker belonging to such company or principal when requested so to do; or has violated any lawful ruling of the insurance department; or has been convicted of a felony; or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker. Before the Superintendent of Insurance shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf. Within thirty days after the revocation or suspension of license or the refusal of the Superintendent to grant a license, the general agent, agent, solicitor, or broker, or applicant aggrieved may appeal from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35-427. Appeals may be taken

from the judgment of said court as prescribed in section 35-427. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

No individual whose license as a general agent, agent, solicitor, or broker is revoked shall be entitled to any license under chapters 3-8 of this Title for a period of one year after revocation.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation: *Provided*, That in lieu of revoking or suspending the license of any such general agent, agent, solicitor, or broker for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continuation of the license of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes of the District of Columbia. (Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 3.)

AMENDMENTS

1958—Section 3 of the act of February 22, 1958, Pub. L. 85-334, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

Chapter 5.—DOMESTIC LIFE COMPANIES

§ 35-535 [5:218hh]. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

(1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory, or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

* * * * *

(5) (a) Bonds, notes, or loans secured by first lien on real estate in the United States or Dominion of Canada worth at least 33⅓ per centum more than the amount loaned thereon: *Provided*, That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part

as therein provided; but nothing in this section shall be deemed to prohibit a company from renewing or extending a loan for the original amount where there has been a shrinkage in the value of such real estate nor to prohibit a company from accepting, as part payment for real estate sold by it, a lien thereon for more than the percentage herein specified of the purchase price of such real estate. For the purpose of this section real estate shall not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, water, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

* * * * *

(June 19, 1934, 48 Stat. 1152, ch. 672, § 35, ch. III; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1.)

AMENDMENTS

1959—Section 1 of the act of September 21, 1959, amended subsection (5)(a) by striking out the figure “40” and substituting the figure “33⅓” in place thereof.

1954—The act of July 19, 1954, amended subsection (1) of the section by adding “or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development” to the end of the subsection.

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

Sec.

35-712. Individual Accident and Sickness Policy Provisions.

§ 35-710 [5: 220i]. Group life insurance.

NOTES TO DECISIONS

NUMBER OF EMPLOYEES REQUIRED

The statute respecting group insurance in view of legislative history, does not manifest a congressional intent that 75 percent of all employees of a government department, board, commission, etc., must be included before the group may be validly insured and an association of not less than 50 employees can be formed and obtain insurance, although the group does not comprise 75 percent of all employees of the government department, board, commission, etc., and even if the sole purpose for the formation of the association is the obtaining of group insurance. *Shenandoah Life Insurance Co. v. Jordan* (1954, 128 F. Supp. 274).

OPINIONS OF SUPERINTENDENT

While the informal opinions of the superintendent of insurance are not conclusive in the construction of a statute the court would not disregard such administrative interpretations despite their informality especially where the interpretation had been followed in practice for a long period of time. *Shenandoah Life Insurance Co. v. Jordan* (1954, 128 F. Supp. 274).

STATUTORY CONSTRUCTION

The terms of a statute should be so construed so as to effectuate the true intent and object of the Legislature in the enactment. *Shenandoah Life Insurance Co. v. Jordan* (1954, 128 F. Supp. 274).

§ 35-712 [5: 220k]. Individual Accident and Sickness Policy Provisions.

1. Filing Requirements

No policy of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, shall be issued or delivered to any person in the District by any company organized under this or any other law of the District, or, if a foreign or alien company, authorized to do business in the District, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the Superintendent; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed, unless the Superintendent shall sooner give his written approval thereto. If the Superintendent shall give written notice to the company which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the Superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427.

2. Form of Policy

(a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in the District unless—

(1) the entire money and other considerations therefor are expressed therein; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

(4) the style, arrangement, and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the text shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions); and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection (3) of this section, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as “EXCEPTIONS,” or “EXCEPTIONS AND REDUCTIONS”: *Provided*, That, if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such

exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or by-laws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Superintendent.

(b) If any policy is issued by an insurer domiciled in the District for delivery to a person residing in another jurisdiction, and if the official having responsibility for the administration of the insurance laws of such other jurisdiction shall have advised the Superintendent that any such policy is not subject to approval or disapproval by such official, the Superintendent may by ruling require that such policy meet the standards set forth in paragraph (a) of this subsection and in subsection (3).

3. Accident and Sickness Policy Provisions

(a) Required provisions: Except as provided in paragraph (c) of this subsection each such policy delivered or issued for delivery to any person in the District shall contain the provisions specified in this paragraph in the words in which the same appear in this paragraph: *Provided, however,* That the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Superintendent which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

"ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(2) A provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (aa) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of subsection 3 (b), (1), (2), (3), (4), and

(5) in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

"After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

"(bb) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(3) A provision as follows:

"GRACE PERIOD: A grace period of _____ (insert a number not less than '7' for weekly premium policies, '10' for monthly premium policies, and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof".

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

"Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted,".

(4) A provision as follows:

"REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due

to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

"NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ----- (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

(6) A provision as follows:

"CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

(7) A provision as follows:

"PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of

claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(8) A provision as follows:

"TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ----- (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

(9) A provision as follows:

"PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity up to an amount not exceeding \$----- (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(10) A provision as follows:

"PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(11) A provision as follows:

"LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."

(12) A provision as follows:

"CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(b) Other provisions: Except as provided in paragraph (c) of this subsection, no such policy delivered or issued for delivery to any person in the District shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this paragraph: *Provided, however,* That the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Superintendent which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

"CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the

classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable ~~or prior~~ to date of proof of change in occupation ~~with~~ the official having supervision of insurance in the jurisdiction where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such jurisdiction prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(2) A provision as follows:

"MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(3) A provision as follows:

"OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ----- (insert type of coverage or coverages) in excess of \$----- (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

(4) A provision as follows:

"INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "**—EXPENSE INCURRED BENEFITS.**" The insurer may, at its option, include

in this provision a definition of "other valid coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(5) A provision as follows:

"INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined."

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "—OTHER BENEFITS." The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or

otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(6) A provision as follows:

"RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss-of-time coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Superintendent or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

"UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(8) A provision as follows:

"CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the

records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the official having supervision of insurance in the jurisdiction where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(9) A provision as follows:

"**CONFORMITY WITH STATE STATUTES:** Any provision of this policy which, on its effective date, is in conflict with the statutes of the jurisdiction in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(10) A provision as follows:

"**ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(11) A provision as follows:

"**INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

(c) Inapplicable or inconsistent provisions: If any provision of this subsection is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Superintendent, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) Order of certain policy provisions: The provisions which are the subject of paragraphs (a) and (b) of this subsection, or any corresponding provisions which are used in lieu thereof in accordance with such paragraphs, shall be printed in the consecutive order of the provisions in such paragraphs or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

(e) Third party ownership: The word "insured", as used in this section, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from

being entitled under such a policy to any indemnities, benefits, and rights provided therein.

(f) Filing procedure: The Superintendent may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this section as are necessary, proper or advisable to the administration of this section. This provision shall not abridge any other authority granted the Superintendent by law.

4. Conforming to Statute

(a) Other policy provisions: No policy provision which is not subject to subsection (3) of this section shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this section.

(b) Policy conflicting with this section: A policy delivered or issued for delivery to any person in the District in violation of this section shall be held valid but shall be construed as provided in this section. When any provision in a policy subject to this section is in conflict with any provision of this section, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of this section.

5. Application

(a) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in the District shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(b) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(c) The falsity of any statement in the application for any policy covered by this section may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

6. Notice; Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of

loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

7. Age Limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

8. Nonapplication to Certain Policies

Nothing in this section shall apply to or affect (1) any policy of group accident, group health, or group accident and health insurance; or (2) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract: *Provided*, That no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the Superintendent under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him. (June 19, 1934, 48 Stat. 1166, ch. 672, § 12, ch. V; July 12, 1950, 64 Stat. 335, ch. 457, § 3; July 16, 1953, 67 Stat. 162, ch. 196, § 1.)

EFFECTIVE DATE

Section 3 of act July 16, 1953, provided:

"This Act shall take effect ninety days after approval. A policy, rider, or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in the District immediately before the effective date of this Act, may be used or delivered or issued for delivery to any such person during three years after the effective date of this Act without being subject to the provisions of subsection (2), (3), or (4) of section 12 [§ 35-712]; *Provided, however*, That when any provision in such policy is in conflict with any provision of such section, the obligations of the insurer shall be governed by the provisions of such section."

AMENDMENTS

1953—Act of July 16, 1953, amended the section generally so as to modernize existing law with respect to life insurance particularly that part relating to the accident and sickness provisions of the Life Insurance Act.

Chapter 10.—INDUSTRIAL LIFE INSURANCE

§ 35-1002 [5: 181b]. Validity of policy—Good faith of insured material element—Unsound health as defense.

NOTES TO DECISIONS

BURDEN OF PROOF

In action on an industrial life policy with defense that insured had been attended by physician for a serious disease which resulted in death and that such was not endorsed on the policy as required by the terms thereof, record established that statutory burden of proof was actually placed upon the insurer to prove the defense by the trial court. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

Where insurer sets up defense of insured's unsound health prior to issuance of policy, whether defense is based on application or on policy provision, insurer has burden of proving that applicant or insured acted in bad faith. *William H. Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

INSURED'S GOOD FAITH

In action to recover under life policy, wherein insurer relied on policy provision that policy was voidable if, within two years prior to date of issuance, insured had undergone hospitalization for condition of a serious nature, test was insured's good faith, and trial court erred in failing to make a finding on that issue. *William H. Walton et ano. v. Sun Life Insurance Co. of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

SUFFICIENCY OF EVIDENCE

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, evidence was sufficient to sustain insurer's burden under statute of proving insured's unsound health, knowledge of insured's unsound health or reason to know thereof, and bad faith of insured or beneficiary or intent to defraud insurer. *M. E. Ferguso v. Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

Chapter 11.—MARINE INSURANCE

§ 35-1104 [5:187]. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.

NOTES TO DECISIONS

MARINE INSURANCE REGULATION

Sections cited in connection with interpretation of marine insurance warranty clauses. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.* (1954, 348 U. S. 310, 75 S. Ct. 368).

Held, that continued regulation of marine insurance should remain with the individual states. *Id.*

Chapter 13.—FIRE, CASUALTY AND MARINE INSURANCE

§ 35-1303. Definitions.

In this chapter, unless the context otherwise requires—

* * * * *

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Number 5 of 1952. (As amended June 30, 1953, 67 Stat. 120, ch. 168.)

* * * * *

AMENDMENTS

1953—Act of June 30, 1953, changed the definition of "Superintendent."

§ 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this chapter, or which—

- (a) is impaired in capital or surplus;
- (b) is insolvent;
- (c) is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors, or to the public;
- (d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;
- (e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;
- (f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;
- (g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;
- (h) fails to file with the Superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;
- (i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;
- (j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or
- (k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200

when in his judgment he finds that public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 4.)

AMENDMENTS

1958—Section 4 of the act of February 22, 1958, Pub. L. 85-334, cited to text, amended this section to read as above set out.

**OFFICE OR AGENCY ABOLISHED BY REORGANIZATION
PLAN NUMBER 5 OF 1952**

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

A domestic company shall invest its funds only in—

- (1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof; or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

* * * * *

(Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II; July 19, 1954, 68 Stat. 494, ch. 546, § 1.)

AMENDMENTS

1954—The act of July 19, 1954, amended subsection (1) by adding "or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development."

§ 35-1331. Policy forms filed with the superintendent—Power to disapprove.

NOTES TO DECISIONS

POWERS OF SUPERINTENDENT

The Superintendent of Insurance is required to regulate insurance carriers, to see that they maintain adequate reserves, to scrutinize their costs and fix their rates, all policy forms used by fire, liability and marine insurance companies must be filed with him, and he may disapprove use of any form which is inequitable or which does not comply with requirements of law. *Bennett v. Amalgamated Cas. Ins. Co.* (1952, 91 U. S. App. D. C. 279, 200 F. 2d 129).

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Bennett v. Amalgamated Cas. Ins. Co.* (1952, 91 U. S. App. D. C. 279, 200 F. 2d 129).

§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance, surety, or indemnity, except title and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy-writing agents or authorized salaried employees licensed in the District as provided in this chapter.

No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of title and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Every company authorized by this chapter to do business in the District shall file annually with the Superintendent on or before the fifteenth day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

No soliciting agent shall have any authority to

countersign any policy. (Feb. 22, 1958, 72 Stat. 22, Pub. L. 85-334, § 5.)

AMENDMENTS

1958—Section 5 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.

Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as defined by this chapter shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. The person to whom the license may be issued shall file sworn answers to such interrogatories as the Superintendent may require. Before the Superintendent shall issue or renew a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

Resident and nonresident brokers shall, as a prerequisite to the issuance of a license, file with the Superintendent a corporate surety bond in an amount not less than \$1,000 for the benefit of any person who may suffer loss resulting from fraud or dishonesty on the part of said resident or nonresident broker. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, who has not previously been licensed under this chapter, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent,

soliciting agent, broker, or salaried company employee. The Superintendent may in his discretion limit the scope of such examination to such particular kind or kinds of business in which the person to be licensed is to be principally engaged. The Superintendent shall issue or renew such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35-1340 and (b) that he has a good business reputation and has had experience, training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing to solicit, negotiate, or effect, and is worthy of a license. In the case of a nonresident applying for a broker's license, the Superintendent may waive the examination requirement and accept in lieu thereof evidence that the applicant holds a license as broker or agent in the State where his principal business is conducted. The Superintendent may also waive the examination requirement in the case of any person who has been licensed in the District prior to the effective date of this chapter. The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under D. C. Code, section 35-425, if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf. Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided*, That on such licenses in addition to the name of the applicant, there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who countersigns policies: *Provided further*, That such named persons as well as the licensee shall be subject to all requirements of this chapter, and that the Superintendent shall have authority at any time to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may in his discretion refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct, meets the standards of this section applicable to persons applying as individuals. No person shall be licensed as agent, broker, or salaried company em-

ployee when it appears to the Superintendent that said license is sought primarily for the purpose of obtaining commissions on policies on which he on his own account pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 32, ch. II; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 3; June 30, 1953, 67 Stat. 120, ch. 168; Feb. 22, 1958, 72 Stat. 23, Pub. L. 85-334, § 6.)

AMENDMENTS

1958—Section 6 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

1953—The act of June 30, 1953, amended section by inserting immediately after the words "prior to the effective date of this chapter" the following new sentence: "The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 26 of the Life Insurance Act (D. C. Code, sec. 35-425), if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf." Editorial changes were made in the sentence.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

NOTES TO DECISIONS

POWERS OF SUPERINTENDENT OF INSURANCE

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc., v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758)

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

QUALIFICATION OF CORPORATE BROKER

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

RENEWAL OF LICENSE

District of Columbia Insurance Commissioner's authority to refuse to *renew* insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same

reasons, as his authority to deny original application. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of Code section specifying when renewal may be denied. *Id.*

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

§ 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.

Upon application for renewal of an expiring license and the payment of the applicable fee prescribed in section 35-1345, the Superintendent shall issue the license applied for when he is satisfied that the applicant therefor meets the conditions set forth in sections 35-1336 and 35-1340. Before the Superintendent shall refuse to renew any such license he shall give to the applicant an opportunity to be fully heard and to introduce evidence in his behalf. If the Superintendent shall refuse to renew any such license he shall give the applicant written notice thereof and he shall not, for a period of ten days from the date of that notice, take any action to stop the applicant from continuing in business, within which period the applicant may apply to any court as provided in section 35-1349, for leave, in the discretion of the court, to continue in business until an appeal from such refusal is decided. (Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 7.)

AMENDMENTS

1958—Section 7 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

NOTES TO DECISIONS

POWERS OF SUPERINTENDENT OF INSURANCE

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insur-*

ance of District of Columbia (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

QUALIFICATION OF CORPORATE BROKER

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

RENEWAL OF LICENSE

District of Columbia Insurance Commissioner's authority to refuse to *renew* insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of Code section specifying when renewal may be denied. *Id.*

REFUSAL TO RENEW LICENSE

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

§ 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.

The Superintendent may revoke or suspend the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities, or that such person has—

(a) violated any of the provisions of the insurance laws of the District; or

(b) has failed within a reasonable time to remit to any company all moneys which he has collected, and to which the company is entitled; or

(c) has been guilty of rebating or has misrepresented the provisions of the policies which he is selling, or the policies of other companies;

(d) has countersigned policies in blank; or that

(e) more than 25 per centum of his commission income from business to which the license applies results from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of this section; or that

(f) said license is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member.

Before the Superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf: *Provided*, That in lieu of revoking or suspending the license of any policy-writing agent, soliciting agent, broker, or salaried company employee for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that public interest would be best served by the continued operation of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 8.)

AMENDMENTS

1958—Section 8 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

NOTES TO DECISIONS

HEARING

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that under statute administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to de novo hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

MISREPRESENTATION

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evi-

dence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

POWERS OF SUPERINTENDENT OF INSURANCE

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

QUALIFICATION OF CORPORATE BROKER

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

RENEWAL OF LICENSE

District of Columbia Insurance Commissioner's authority to refuse to *renew* insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Atlantic Insurance Agency, Inc. v. Albert F. Jordan, Superintendent of Insurance of District of Columbia* (1955, 97 U. S. App. D. C. 184, 229 F. 2d 758).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of Code section specifying when renewal may be denied. *Id.*

TRIAL DE NOVO

Where Superintendent of Insurance of the District of Columbia refused to renew license of policy-writing agent for an insurance company, and agent, in bringing suit in federal district court to review the action of the Superintendent chose to frame his complaint broadly and seek the fullest measure of relief, court did not err in conducting a de novo trial which explored grounds beyond those on which the Superintendent rested his refusal to renew. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

§ 35-1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.

The provisions of this chapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in

the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 9.)

AMENDMENTS

1958—Section 9 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35-1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than \$100 nor more than \$1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided*, That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the Municipal Court for the District of Columbia by the corporation counsel or any of his assistants. (Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 10.)

AMENDMENTS

1958—Section 10 of the act of February 22, 1958, cited to text, amended this section to read as above set out.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of the act of February 22, 1958, Pub. L. 85-334, cited to text, provides as follows:

Where any provision of this Act or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished.

§ 35-1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

NOTES TO DECISIONS

HEARING

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that under statute administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to de novo hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (1957, 148 F. Supp. 317).

TRIAL DE NOVO

Where Superintendent of Insurance of the District of Columbia refused to renew license of policy-writing agent for an insurance company, and agent, in bringing suit in federal district court to review the action of the Superintendent chose to frame his complaint broadly and seek the fullest measure of relief, court did not err in conducting a de novo trial which explored grounds beyond those on which the Superintendent rested his refusal to renew. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application

for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

§ 35-1401. Definitions.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1402. Rates included in and excluded from regulation.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

STANDING TO SUE DOCTRINE

Statutory right to sue, which is based upon statute authorizing person aggrieved by action of Superintendent of Insurance of District of Columbia to appeal to District Commissioners or contest the validity of such action by appeal or other appropriate proceeding in a court of competent jurisdiction, enlarges the "standing-to-sue doctrine," which forbids suits by parties who are merely taxpayers, who are interested in obtaining government contracts, desirous of preventing competition caused by government activity, etc. *National Capitol Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1406. Rating bureau records—Agency records.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

§ 35-1409. Penalties.

NOTES TO DECISIONS

INSURER HAS RIGHT OF APPEAL

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended

coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

PERSON AGGRIEVED

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1957, 148 F. Supp. 317).

Chapter 15.—REGULATION OF CASUALTY AND
OTHER INSURANCE RATES

§ 35-1507. Information to be furnished by companies.

NOTES TO DECISIONS

EVIDENCE OF INSURANCE

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 90 U. S. App. D. C. 222, 196 F. 2d 568).

TITLE 36.—LABOR

Chap.

6. Payment and Collection of Wages..... 36-601

Chapter 2.—CHILD LABOR AND WORK PERMITS

Sec.

36-228. Juvenile court has jurisdiction.

§ 36-207a. Work permits for minors between ages of 14 and 18 years authorized for stage appearances—Regulations.

The Board of Education of the District of Columbia, or a duly authorized agent thereof, is authorized to issue a work permit to any minor under eighteen years of age, said permit authorizing and permitting the appearance of such minor on the stage of a duly licensed legitimate or vaudeville theater within the District of Columbia, in any professional travelling theatrical production, or act, or in a musical recital or concert: *Provided*, That such minor is at least seven years of age: *Provided further*, That such minor shall not appear on said stage in more than two performances in any one day, nor more than eight performances in any one week, and shall not appear on said stage after the hour of 11:30 postmeridian. Application for such permit should be made by the parent or guardian of such minor to the Board of Education of the District of Columbia or a duly authorized agent thereof, at such time as the Board may require. The Board or its agent may issue a permit if satisfied that the parent or guardian of such minor has made adequate provision for the educational instruction of such minor and for safeguarding his health and for the proper supervision of such minor.

The Board is authorized to promulgate such rules and regulations as may be necessary to protect properly the health, morals, and safety of minors coming within the purview of this chapter. (As amended July 3, 1952, 66 Stat. 329, ch. 569, § 1.)

AMENDMENTS

1952—The act of July 3, 1952, cited to text, reduced the age requirement from 14 to 7 years and deleted the provision which required the minor to have completed eight grades of elementary instruction or its equivalent. The number of performances a week was reduced from twelve to eight; the restriction on hours per performance by day and week was deleted and 11:30 postmeridian was substituted for 11:00 postmeridian.

§ 36-228. Juvenile court has jurisdiction.

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 36-201 to 36-227. (May 29, 1928, 45 Stat. 1006, ch. 908, § 26.)

COMPILER'S NOTE

This section was not included in prior additions of the code.

Chapter 4.—MINIMUM WAGE LAW

SUBCHAPTER I.—MINIMUM WAGES

§ 36-401 [19:211]. Definitions.

NOTES TO DECISIONS

CLASSIFICATION OF OCCUPATIONS

The Minimum Wage Board of the District of Columbia may use its discretion in the classification of occupations under the Minimum Wage Law so long as there is a reasonable basis for such classification, but a lumping together of all unclassified or miscellaneous occupations as one occupation is not a reasonable classification. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

CONSTITUTIONALITY

A Supreme Court decision that District of Columbia Minimum Wage Law is unconstitutional did not repeal or abolish such law, which became effective, without re-enactment by Congress, when effect of such decision was removed by Supreme Court's subsequent decision holding similar law of State of Washington constitutional and expressly overruling previous decision. *Jawish v. Morlet* (D. C. Mun. App. 1952, 86 A. 2d 96).

OCCUPATIONAL CATEGORIES

Order of the Minimum Wage Board of the District of Columbia covering certain named occupations as well as a "miscellaneous" category is invalid under Minimum Wage Law of the District of Columbia, prescribing an occupational basis for classification of workers. *District of Columbia v. Chambers et al.* (1953, 92 U. S. App. D. C. 296, 207 F. 2d 14).

§ 36-402 [19:212]. Minimum Wage and Industrial Safety Board—Members—Quorum.

TRANSFER OF FUNCTIONS

Reorganization Order No. 36 of the Board of Commissioners dated June 16, 1953 established under the direction and control of a Commissioner, a Minimum Wage and Industrial Safety Board headed by a chairman and consisting of three members appointed by the Board of Commissioners. All functions of the previously existing Minimum Wage and Industrial Safety Board including the duties, powers, and authorities of all officers and employees assigned thereto were transferred to the new Board, and all members of the previous Board were reappointed to the new Board. All positions, personnel, property, records and unexpended balances relating to functions and positions transferred were transferred to the new Board, and the previously existing Board was abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 36-407 [19:218]. Authority concerning wages of women and minors.

NOTES TO DECISIONS

BASIS OF ORDERS

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage Board on an occupational basis. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-409 [19:220]. Conference on inadequate wages.

NOTES TO DECISIONS

BASIS OF ORDERS

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage

Board on an occupational basis. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-411 [19:222]. Action of Board—Public hearings.

NOTES TO DECISIONS

CLASSIFICATION OF OCCUPATIONS

Order of the Minimum Wage Board of the District of Columbia covering certain named occupations as well as a "miscellaneous" category is invalid under Minimum Wage Law of the District of Columbia, prescribing an occupational basis for classification of workers. *District of Columbia v. Chambers et al.* (1953, 92 U. S. App. D. C. 296, 207 F. 2d 14).

Order of the Minimum Wage Board under the Minimum Wage Law of the District of Columbia placing in one class stenographers, bookkeepers, typists, clerks, cashiers, checkers, professional's assistants and attendants, laboratory mechanics and technicians, messengers, ushers, telegraph and telephone operators, and all similar workers is too broad in its coverage and is invalid. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-417 [19:228]. Penalties for violations.

NOTES TO DECISIONS

JUDGMENT

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of \$25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled \$100, action of Municipal Court would be deemed the entering of one judgment in excess of \$50, and therefore it was not necessary for defendants to comply with statute providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than \$50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers v. District of Columbia* (1952, 90 U. S. App. D. C. 153, 194 F. 2d 336).

Chapter 5.—WORKMEN'S COMPENSATION

§ 36-501 [19:11]. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

NOTES TO DECISIONS

AGGRAVATION OF ILLNESS

In suit by widow to set aside denial of benefits for death of husband who had been awarded compensation as having been totally and permanently disabled while on job by unexpected overexertion which materially aggravated preexisting aneurysm of abdominal aorta, evidence established that exertion materially aggravated diseased aortic condition, and that disabling effect of injury continued until death. Aggravation of preexisting aneurysm of abdominal aorta, caused by unexpected overexertion, constituted "accidental injury" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Alice P. Friend, surviving widow v. Theodore Britton, Commissioner et al.* (1955, 95 U. S. App. D. C. 139, 220 F. 2d 820).

Where deceased's conduct demonstrates a sudden change in a pre-existing illness, the question arises whether that illness had been aggravated by the employment; and where upon a truck driver's return from a long and arduous trip he suddenly became obsessed with idea that he was being pursued by mob, with result that he was confined in jail, and was thereafter shot by police officer whom truck driver had violently attacked, wherein there was evidence of pre-existing nervous disorder, evidence was sufficient to warrant conclusion that death arose out of and in the course of employment. *Robinson v. Bradshaw* (1953, 92 U. S. App. D. C. 216, 206 F. 2d 435, certiorari denied Nov. 30, 1953, 346 U. S. 899).

If an illness which itself is unrelated to the employment is nevertheless aggravated thereby and death is result, then the death is the result of an injury within

the meaning of the Longshoremen's and Harbor Workers' Compensation Act, which is the compensation statute applicable in District of Columbia. *Id.*

APPLICATION OF STATUTE

Workmen's compensation acts are remedial statutes and must be liberally construed in favor of injured employees or deceased employees' dependent families. *Liberty Mutual Insurance Co. et al. v. P. J. Donovan et al.* (1954, 124 F. Supp. 320).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, and employee and subcontractor's insurer, which had paid workmen's compensation to employee, sought recovery in Virginia from general contractor, on ground that general contractor negligently caused employee's injuries, courts in Virginia, including federal tribunals, could treat the District of Columbia Compensation Law with its privilege of suing the general contractor as a constituent of employee's contract of employment. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; Code Va. 1950, § 65-58; 33 U. S. C. A. § 901 note. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, employee and subcontractor's insurer which had paid workmen's compensation to employee, were entitled to maintain action in federal district court in Virginia against general contractor, on ground that general contractor negligently caused employee's injuries, though such action was not maintainable under Virginia compensation law. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; Code Va. 1950, § 65-58; 33 U. S. C. A. § 901 note. *Liberty Mut. Ins. Co. et al. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

Death benefits under amendatory provision of Longshoremen's and Harbor Workers' Compensation Act which increased benefits payable and which stipulated that increase should be applicable only to injuries or death occurring on or after effective date of amendment, were payable for death of employee which occurred after effective date but which resulted from injury which happened prior to effective date. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 6, 9, as amended, 33 U. S. C. A. §§ 901 et seq., 906, 909; Act June 24, 1948; § 6, 33 U. S. C. A. § 906 note. *Travelers Ins. Co. v. Toner et al.* (1951, 89 U. S. App. D. C. 77, 190 F. 2d 30).

CAUSAL RELATIONSHIP

Fact that workman's death from coronary thrombosis occurred shortly after attack of chest pains was evidence of causal relationship between attack and death, as was strenuous nature of work prior to fatal attack. *Jessie L. Vendemia v. Anthony J. Cristaldi et al.* (1955, 95 U. S. App. D. C. 230, 221 F. 2d 103).

For purposes of compensation under Longshoremen's and Harbor Workers' Compensation Act, to hasten death is to cause it. *Id.*

On appeal from summary judgment for defendants in suit by widow to set aside denial of benefits for death of husband under Longshoremen's and Harbor Workers' Compensation Act, reviewing court's task was to ascertain whether Deputy Commissioner's findings were supported by substantial evidence on record considered as a whole, and reviewing court would not sustain administrative findings merely because they were substantiated by some isolated evidence. *Alice P. Friend, surviving widow v. Theodore Britton, Commissioner et al.* (1955, 95 U. S. App. D. C. 139, 220 F. 2d 820).

COMMISSIONER'S FINDING OF FACT

In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, neither the District Court nor the Court of Appeals is a trier of facts. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33

U. S. C. A. § 901 et seq.; D. C. Code 1940, § 36-501, 33 U. S. C. A. § 901 note. *United States Fidelity & Guaranty Co. v. Britton* (1951, 88 U. S. App. D. C. 293, 188 F. 2d 674).

COMMISSIONER'S VIEWS

Deputy commissioner, in a proceeding under Longshoremen's and Harbor Workers' Compensation Act, need not disclose his reasoning processes in reaching a conclusion, but court should have, to extent possible, deputy commissioner's views so as to be able to follow and appraise his application of law to the evidence. *Jessie L. Vendemia v. Anthony J. Cristaldi et al.* (1955, 95 U. S. App. D. C. 230, 221 F. 2d 103).

COMPENSATION PAYMENTS

In action against District of Columbia for personal injuries, defense that plaintiff waived right to recover damages from District by receiving compensation payments from his employer without an award under Longshoremen's Compensation Act was legally insufficient, where plaintiff filed notice of election to recover damages from District, instead of receiving compensation under act. *Jordan et ux. v. District of Columbia* (1953, 116 F. Supp. 559).

CONFLICT OF LAWS

Maryland Workmen's Compensation Act, relieving principal contractor of common law liability to employees of his subcontractors if he has workmen's compensation insurance for their benefit, would be a bar to District of Columbia tort action brought against principal contractor by electrician employed in District of Columbia by subcontractor but injured while working on principal employer's project in Maryland. *Jonathan Woodner Co. v. Mather* (1954, 93 U. S. App. D. C. 234, 210 F. 2d 868).

State of employment can give workmen's compensation even though injury occurred in another jurisdiction which would provide workmen's compensation, on basis said to be exclusive; and state in which injury occurred can provide workmen's compensation even though state where contract of employment was made would also provide workmen's compensation, on a purportedly exclusive basis. *Id.*

CONSTRUCTION

Longshoremen's and Harbor Workers' Compensation Act is to be construed with view to its beneficial purposes, and doubts, including the factual, are to be resolved in favor of the employee or his dependent family. *Alice P. Friend, surviving widow v. Theodore Britton, Commissioner et al.* (1955, 95 U. S. App. D. C. 139, 220 F. 2d 820).

Longshoremen's and Harbor Workers' Compensation Act is remedial in character and is to be liberally construed, with doubts being resolved in favor of the employee or his dependent family. *Robinson v. Bradshaw*. (1953, 92 U. S. App. D. C. 216, 206 F. 2d 435).

Congress did not, by enactment of wrongful death statute and compensation act applicable to District of Columbia, intend to create two separate and independent causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarrocchi v. James Kane Co. et al.* (1953, 116 F. Supp. 848).

COURSE OF EMPLOYMENT

Where coworker on third floor level was handing down to employee on ground planks weighing some 90 pounds each and employee collapsed while on the job, and it was found that he had suffered a paralysis of his right side due to occlusion of a cerebral vessel and that his "strenuous work" as found by deputy commissioner had accelerated a severe pre-existing, but symptom-free, diastolic hypertension, and also diagnosed was a sclerosis of the cerebral arteries, findings of district court that employee's injury arose out of and in course of his employment did not lack substantial support in the evidence. *General Accident Fire & Life Assurance Corp. et al. v. P. J. Donovan, Deputy Commissioner, etc.* (1958, 102 U. S. App. D. C. 204, 251 F. 2d 915).

Findings of deputy commissioner, in proceeding under Longshoremen's and Harbor Workers' Compensation Act,

as to whether death of an employee arose out of and in the course of his employment, are to be accepted unless they are unsupported by substantial evidence on the record considered as a whole. *Robinson v. Bradshaw* (1953, 92 U. S. App. D. C. 216, 206 F. 2d 435).

DEPENDENCY

For dependency within Longshoremen's and Harbor Workers' Compensation Act, there must be a legal or a voluntarily created status where the contributions are made for the purpose and have the result of maintaining or helping to maintain the dependent in his customary standard of living. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; D. C. Code 1940, § 36-501, 33 U. S. C. A. § 901 note. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 88 U. S. App. D. C. 293, 188 F. 2d 674).

DUE PROCESS

The provision in Longshoremen's Compensation Act that employer's liability for benefits under the act is exclusive and in place of all other liability of employer to employee and anyone else entitled to recover damages from employer does not cover damages from employer on account of such injuries does not deny due process to electric company barred by such provision from recovering contribution in third party action from gas company for injuries received by employee, to whom compensation had been paid, when gas company's crane came in contact with electric company's overhead high voltage power line. *Coates v. Potomac Electric Power Co. (Washington Gas Light Co., Third-Party Defendant)* (1951, 95 F. Supp. 779, 96 F. Supp. 1019).

ELECTION OF REMEDIES

An injured employee's mere acceptance of compensation payments from his employer without an award under Longshoremen's Compensation Act does not preclude him from thereafter electing to sue a third-party tort-feasor for damages. *Jordan et ux. v. District of Columbia* (1953, 116 F. Supp. 559).

Workmen's Compensation Act applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under wrongful death statute making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil v. Shelton Bros. Trucking Co.* (1953, 116 F. Supp. 654).

EMPLOYERS' LIABILITY

The liability of an employer who is insured under the Workmen's Compensation Act is limited to the amount of damages prescribed. *Brown v. Curtin & Johnson Inc.* (1953, 117 F. Supp. 83).

The liability of the employer under the Workmen's Compensation Act is exclusive. *Id.*

EMPLOYMENT RELATIONSHIP

In workmen's compensation proceeding, evidence supported commissioner's findings that defendants were claimant's "employers" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Harris v. Deputy Commissioner etc., et al.* (1954, 95 U. S. App. D. C. 32, 218 F. 2d 45).

EVIDENCE TO SUSTAIN AWARD

In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, the evidence sustained finding of Deputy Commissioner that employee's mother, sister and brother were dependents within meaning of Act. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; D. C. Code 1940, § 36-501, 33 U. S. C. A. § 901 note. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 88 U. S. App. D. C. 293, 188 F. 2d 674).

EVIDENCE

Evidence sustained award of Deputy Commissioner to claimant under the District of Columbia Workmen's Compensation Act, incorporating by reference the Longshoremen's and Harbor Workers' Compensation Act, on ground that claimant sustained permanent partial disability as result of injury sustained in course of employment. *Gilbane Building Company et al. v. T. Britton, Deputy Commissioner et al.* (1959, 105 U.S. App. D.C. 101, 264 F. 2d 574).

A finding of Deputy Commissioner of District of Columbia Bureau of Employees' Compensation that death of night watchman as result of coronary occlusion arose out of his employment within Longshoremen's Compensation Act, applicable as District's workmen's compensation law, was supported by substantial evidence, whether such occlusion occurred immediately before or after deceased slipped and fell down stairway in course of his employment. *Liberty Mutual Insurance Co. et al. v. P. J. Donovan et al.* (1954, 124 F. Supp. 320).

In action to review award of compensation under Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, for employee's death, District Court may not substitute its own judgment for finding of Deputy Commissioner of District Bureau of Employees' Compensation, supported by substantial evidence, that death arose out of decedent's employment. *Id.*

Conclusions of deputy commissioner that employee's tuberculosis was contracted during employment and out of the employment because of aggravated risk resulting from employee's being sent by employer to work in Japan, which has a comparatively high incidence rate of tuberculosis, were reasonably supported by evidence. *Travelers Insurance Co. v. P. J. Donovan* (1954, 125 F. Supp. 261).

EXCLUSIVE REMEDY

The compensation provided by officers' mess for injuries to civilian employees of the mess was employee's exclusive remedy against the United States and he could not recover under Tort Claims Act though private insurance carrier was compensation insurer of the mess. *L. K. Aubrey & C. R. Aubrey v. United States* (1959, 103 U.S. App. D. C. 65, 254 F. 2d 768).

EXCLUSIVE NATURE OF REMEDY

Where gas company employee recovered longshoremen's compensation for injuries, electric company sued by employee for injuries received when gas company's crane came in contact with electric company's overhead high voltage power line was barred from recovering contribution from gas company in third party action by provision in Longshoremen's Compensation Act that employer's liability for benefits under the Act is exclusive and in place of all other liability of employer to employee and to anyone else entitled to recover damages from employer on account of such injuries. *Coates v. Potomac Electric Power Co. (Washington Gas Light Co., Third Party Defendant)* (1951, 95 F. Supp. 779, 96 F. Supp. 1019).

FEDERAL JURISDICTION

Where Longshoremen's and Harbor Workers' Compensation Act had been made applicable in District of Columbia as a workmen's compensation law, suit by employer's insurer as statutory assignee under Act against third party tort-feasors would involve a federal question under Longshoremen's and Harbor Workers' Compensation Act and Act was a law of United States within meaning of statute authorizing federal jurisdiction if cause of action arises under federal statute. *City Stores Company v. F. T. Shull Sr., et al.* (1958, 161 F. Supp. 459).

FINALITY OF AWARD

Trial court's action in dismissing defendant's suit to set aside supplementary order, declaring amount in default in workmen's compensation proceeding, and in entering judgment for amount in default was not error, where defendants were notified of application for such supplementary order and failed to respond thereto.

Harris v. Deputy Commissioner etc. et al. (1954, 95 U. S. App. D. C. 32, 218 F. 2d 45).

GENERAL CONTRACTOR AS "THIRD PERSON"

Since the District of Columbia Compensation Law is an adaptation of the Longshoremen's and Harbor Workers' Compensation Act, it will by analogy be interpreted to render a general contractor suable as a "third person" by an employee of a subcontractor. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. § 901 et seq.; 33 U. S. C. § 901 note. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

IMPAIRED ANNUAL EARNING CAPACITY

In determining impaired annual earning capacity of an injured employee under the Longshoremen's and Harbor Workers' Compensation Act as made applicable to the District of Columbia, "general earnings" are not restricted to employments or types of employment but rather extend to individual earnings. *Liberty Mutual Insurance Co. v. Theodore Britton, Deputy Commissioner et al.* (1956, 98 U. S. App. D. C. 208, 233 F. 2d 699).

In workmen's compensation proceedings for injuries sustained by employee when he fell some 45 feet during installation of an elevator, evidence sustained finding of employee's impaired earning capacity. *Id.*

In awarding workmen's compensation based on impaired capacity to earn, previous earnings from a job other than the one in which the injury was sustained were properly considered along with previous earnings of the injured employee in the employment in which he was working at the time of the injury, even though the job at which employee was injured was full year-round employment. *Id.*

INJURIES IN THE COURSE OF EMPLOYMENT

An employee's injury, occurring on employer's premises during employee's working hours, is presumed to have arisen out of his employment within Longshoremen's Compensation Act applicable as District of Columbia workmen's compensation law, unless contrary is shown. *Liberty Mutual Insurance Co. et al. v. P. J. Donovan et al.* (1954, 124 F. Supp. 320).

While presumption that employee's injury, occurring on employer's premises, arose out of employment within Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, is not evidence, it shifts burden of going forward with evidence to overcome presumption. *Id.*

INJURIES OUTSIDE SCOPE OF EMPLOYMENT

A finding of Deputy Commissioner that employee's disability because of Parkinson's disease was not caused by automobile collision while he was driving to work was supported by substantial evidence, so that Deputy Commissioner properly denied employee's claim for compensation under Longshoremen's Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. § 901 et seq.; 33 U. S. C. § 901 note. *Richardson v. Britton et al.* (1951, 89 U. S. App. D. C. 391, 192 F. 2d 423).

INJURY, DEFINITION OF

Any attack of an occupational disease, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment, is an "injury" within definition of term in Longshoremen's Compensation Act. *Cadwallader v. Sholl* (1952, 89 U. S. App. D. C. 285, 196 F. 2d 14).

Any attack of an occupational disease, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment, is an "injury" within definition of term in Longshoremen's Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, § 2 (2), 33 U. S. C. § 902 (2); 33 U. S. C. § 901 note. *Cadwallader v. Sholl et al.* (1952, 89 U. S. App. D. C. 285, 196 F. 2d 14, certiorari denied 343 U. S. 966, 72 S. Ct. 1061, 1075).

INSURANCE COVERAGE

Bridge constructor's employee's electrocution, as result of crane's coming into contact with power line after lifting beam from assured's truck but prior to placing

beam in position which it was eventually to occupy in new structure, occurred during the "unloading" of assured's truck, for purposes of "loading and unloading" clause of automobile liability policy. *Indemnity Insurance Company of N. A. v. Old Dominion Hoisting Service; Indemnity Insurance Company of N. A. v. Kemp-Smith Company* (1958, 102 U. S. App. D. C. 141, 251 F. 2d 382).

JURISDICTION

In proceeding under District of Columbia Workmen's Compensation Act, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *United States Fidelity and Guaranty Co. v. P. J. Donovan, Deputy Commissioner etc.* (1954, 94 U. S. App. D. C. 377, 221 F. 2d 515).

To give Deputy Commissioner jurisdiction to award compensation, employee killed or injured need not have been working at time within the District of Columbia, and he would be within the intent and design of the statute when employer's office, the place of hiring, the employee's residence and other factors provide substantial connection between the district and the particular employee-employer relationship. *United States Fidelity and Guaranty Co. v. P. J. Donovan, Deputy Commissioner etc.* (1954, 94 U. S. App. D. C. 377, 221 F. 2d 515).

LIABILITY FOR MEDICAL SERVICE

The employer is liable for all legitimate consequences following an accident, including unskillfulness or error of judgment of the physician furnished as required, and the employee is entitled to recover under the schedule of compensation for the extent of his disability, based on the ultimate result of the accident, regardless of the fact that the disability has been aggravated and increased by the employer's selected physician, and this remedy is exclusive. *Fernandez v. Gantz et al.* (1953, 113 F. Supp. 763).

Where award of compensation was based upon the ultimate result of the accident, including results of malpractice of physician furnished by employer, employer and its insurance carrier were not answerable in damages beyond the award of compensation, when it was not alleged that there had been negligence in selection of the physician. *Id.*

LIABILITY FOR RECURRING INJURY

Where claimant contracted tuberculosis while serving as a visiting nurse during period of policy issued by prior compensation carrier, and disability occurred again 12 years later during term of policy issued by subsequent carrier, liability would be imposed upon the carrier which was on the risk at time of occurrence of injury bearing the requisite causal relationship to the disability giving rise to the claim. *American Casualty Co. of Reading, Pa., etc. v. Theodore Britton, Deputy Commissioner, etc.* (1955, 97 U. S. App. D. C. 1, 227 F. 2d 16).

LOSS OF CONSORTIUM

Payment of compensation under Longshoremen's and Harbor Workers' Compensation Act barred claim of employee's wife against employer for loss of consortium. *A. Thomas v. Central Linen Co.* (1959, 105 U.S. App. D.C. 49, 263 F. 2d 495).

Wife of injured employee was barred by the Workmen's Compensation Act from maintaining an action against his employer for loss of consortium as result of injuries sustained by employee while working for employer, on ground that employer was negligent. *Smither and Company, Inc. v. Coles* (1957, 100 U. S. App. D. C. 68, 242 F. 2d 220).

LOSS OF SERVICES

Where plaintiff's husband elected to file suite against third-part tort-feasor thereby electing not to receive workmen's compensation and a settlement was reached in which the wife joined, wife was not entitled to recover against the husband's employer for loss of services resulting from the injury to the husband occurring in the course of his employment. *M. Hilton v. Fifteen Hundred Mass. Ave. Inc.* (1958, 104 U.S. App. D.C. 259, 261 F. 2d 377).

PRESUMPTIONS

Under the circumstances, evidence that tuberculosis rate in Japan was five times that in District of Columbia supported award of compensation to employee who was assigned to work in Japan and who there contracted the disease, in absence of substantial evidence to rebut statutory presumption that disability arose from employment. *The Travelers Insurance Co. v. P. J. Donovan, Deputy Commissioner etc.* (1955, 95 U. S. App. D. C. 331, 221 F. 2d 886).

PRIOR RECOVERY

Under full faith and credit clause of federal constitution, Maryland award of workmen's compensation benefits for death of employee engaged in extrahazardous employment of plumbing, being a determination of all rights against employer and insurer growing out of employee's fatal injury, barred recovery of additional benefits allowable under District of Columbia Workmen's Compensation Act. *Gasch et al. v. Britton, Deputy Commissioner, Bureau of Employees' Compensation, et al.* (1953, 92 U. S. App. D. C. 64, 202 F. 2d 356).

PROGRESSION OF DISEASE

Where subsequent recurrence of tuberculosis in claimant was result of natural progression of the disease unaffected by any intervening work-connected cause, compensation carrier which had granted coverage at time of claimant's original, compensable disability from tuberculosis, not subsequent carrier granting coverage at time of subsequent disability, would be liable for the subsequent disability. *American Casualty Co. of Reading, Pa., etc. v. Theodore Britton, Deputy Commissioner, etc.* (1955, 97 U. S. App. D. C. 1, 227 F. 2d 16).

PURPOSE

The purpose of the Workmen's Compensation Act is to provide not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinative. *Smither and Company, Inc. v. Coles* (1957, 100 U. S. App. D. C. 68, 242 F. 2d 220).

The purpose of the Workmen's Compensation Act is to substitute fixed payments for personal injuries sustained or death caused in the course of employment for the common-law cause of action for damages. *Brown v. Curtin & Johnson Inc.* (1953, 117 F. Supp. 83).

QUESTIONS OF LAW

Where baker's contact with flour caused dermatitis and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, whether the recurrence was an injury within provision of Longshoremen's Compensation Act requiring claim to be filed within one year after injury or one year after last payment made without an award was question of law for court to decide, in absence of any specific elements that might differentiate baker's recurrence of dermatitis from other recurrences of occupational diseases. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2 (2), 13 (a), 33 U. S. C. §§ 901 et seq., 902 (2), 913 (a); 33 U. S. C. § 901 note. *Cadwallader v. Sholl et al.* (1952, 89 U. S. App. D. C. 285, 196 F. 2d 14, 343 U. S. 966, 72 S. Ct. 1061, 1075).

RECURRENCE AS INJURY

Where baker's contact with flour caused dermatitis and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, whether the recurrence was an injury within provision of Longshoremen's Compensation Act requiring claim to be filed within one year after injury or one year after last payment made without an award, was question of law for court to decide, in absence of any specific elements that might differentiate baker's recurrence of dermatitis from other recurrences of occupational diseases. *Cadwallader v. Sholl* (1952, 89 U. S. App. D. C. 285, 196 F. 2d 14).

RECURRENCE OF DISABILITY

Longshoremen's Act provision, barring right to compensation for disability unless claim therefor was filed

within one year after injury, barred claim for compensation for recurrence of disability where claim was filed more than one year after injury responsibility for disability, even though such claim was filed within one year from date when disability recurred. *Henriot v. General Accident Fire and Life Assurance Corp.* (D. C. Mun. App. 1957, 134 A. 2d 374).

REVIEW

A deputy employees' compensation commissioner's determination sustained by District Court, fixing injured employee's wage-earning capacity, on which award of compensation for permanent partial disability was based, at smaller sums per week than wages actually received by him before and after injury, pursuant to finding that his post-injury wages did not reasonably represent his wage-earning capacity, will not be disturbed by Court of Appeals. *Liberty Mutual Insurance Co. et ano. v. Britton et al.* (1957, 100 U. S. App. D. C. 236, 243 F. 2d 659).

In action to review Deputy Commissioner's order denying claim for compensation under Longshoremen's Compensation Act pursuant to finding that plaintiff's disability was not caused by accident, question is whether such finding is supported by substantial evidence on record considered as whole. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. § 901 et seq.; 33 U. S. C. § 901 note. Administrative Procedure Act, 5 U. S. C. § 1001 et seq. *Richardson v. Britton et al.* (1951, 89 U. S. App. D. C. 391, 192 F. 2d 423, certiorari denied 343 U. S. 920, 72 S. Ct. 676).

RIGHT OF ACTION

Widow, who was receiving compensation under Workmen's Compensation Act for husband's death as a result of defendant employer's claimed negligence, was not entitled to recover as against employer for loss of consortium. *Brown v. Curtin & Johnson Inc.* (1953, 117 F. Supp. 83).

RIGHTS OF EMPLOYER

Under Longshoremen's and Harbor Workers' Compensation Act which provided that insurance carrier shall be subrogated to all rights of employer, fact that premium paid by decedent's employer for policy year in which injury and death occurred was materially increased by reason of a compensation claim paid by employer's insurer and fact that future premiums would be based upon experience rating of employer for prior years and would also be increased did not entitle employer to bring wrongful death action as sole plaintiff. *City Stores Company v. F. T. Shull Sr., et al.* (1958, 161 F. Supp. 459).

Under Longshoremen's and Harbor Workers' Compensation Act which provided that the insurance carrier shall be subrogated to all rights of the employer, as between carrier and employer, carrier was, as statutory assignee, the sole recipient of all right of the person entitled to compensation to recover damages against one liable in damages other than the employer. *Id.*

RIGHT OF PROMPT PHYSICAL EXAMINATION

When a person asserts a claim under the workmen's compensation law, the employer or his insurance carrier should be afforded a prompt opportunity to examine the claimant at the earliest possible time, especially when conditions of the heart are involved. *Good Impressions, Inc., et ano. v. T. Britton* (1958, 169 F. Supp. 866).

SICKNESS AND INJURY

Where baker's contact with flour caused dermatitis which disabled her from July, 1944 to October, 1946, during which period employer paid her compensation without claim or award, and in December, 1946 she suffered a recurrence which wholly disabled her from January, 1947, and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, compensation claim filed in November, 1947 within one year after disease recurred was timely under Longshoremen's Compensation Act providing that right to compensation is barred unless a claim therefor is filed

within one year after injury or one year after last payment made without award, whether baker resumed work during interval and thereby brought about recurrence or whether baker did not resume work in which case the second attack was a consequence of the previous work that had caused the previous attack. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 2 (2), 13 (a), 33 U. S. C. §§ 901 et seq., 902 (2), 913 (a), 33 U. S. C. § 901 note. *Cadwallader v. Sholl et al.* (1952, 89 U. S. App. D. C. 285, 196 F. 2d 14, 343 U. S. 966, 72 S. Ct. 1061, 1075).

STATUTE OF LIMITATIONS

Where decedent's employer and employer's insurer to their own use and use of widow and use of executor of estate of decedent brought action for wrongful death of employee against third party tort-feasors and second amended complaint indicated that sole plaintiff was employer, allowance of reinstatement of employer's insurer as plaintiff in third amended complaint would not assert a new cause of action, but merely reassert a cause of action, the jurisdictional basis of which was the same, in part, alleged to have existed in original, amended, and second amended complaints and cause of action would not be barred by Statute of Limitations. *City Stores Company v. F. T. Shull Sr., et al.* (1958, 161 F. Supp. 459).

SUFFICIENCY OF NOTICE

Where only alleged notice given employer of heart attack allegedly sustained by claimant in the course of his employment was a telephone call by claimant's wife to employer on the following day, in which she informed employer that claimant had been ill the night before and that the doctor said he had a heart attack, and that he was in the hospital, and no further notice was given until approximately one year later, employer was deprived of timely notice of the claim asserted, and such failure to give timely notice barred claimant's right to compensation. *Good Impressions, Inc., et ano. v. T. Britton* (1958, 169 F. Supp. 866).

SUMMARY JUDGMENT

Where injured employee had received hospital treatment and compensation under Longshoremen's and Harbor Workers' Compensation Act, and brought action against employer to recover damages apart from compensation statute, but set forth no cause of action against employer in which there was any genuine issue of material fact bearing upon claim for damages other than amounts due under compensation statute, summary judgment was properly entered for employer. *A. Thomas v. Central Linen Co.* (1959, 105 U.S. App. D.C. 49, 263 F. 2d 495).

WIDOW

To be entitled to workmen's compensation award as widow, woman must have continued to live as deserted wife of employee who has deserted her, and there must be bond in reality between husband and wife in their relation to one another, essential ingredient in her claim being her real status factually, not existing legal formalities of relationship. *Liberty Mutual Ins. Co. et al. v. Donovan* (1955, 95 U. S. App. D. C. 49, 218 F. 2d 860).

WIDOW'S ACCEPTANCE OF AWARD BARS OTHER REMEDIES

Where widow had accepted award of benefits under Workmen's Compensation Act, all rights to damages had been superseded by provisions of act, and she could not maintain action against employer for loss of consortium for death of husband. *Myrtle V. Brown v. Curtin & Johnson, Inc.* (1955, 95 U. S. App. D. C. 234, 221 F. 2d 106).

§ 36-502 [19:12]. Exceptions.

NOTES TO DECISIONS

APPLICATION OF STATUTE

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged

negligence of general contractor, employee and subcontractor's insurer which had paid workmen's compensation to employee, were entitled to maintain action in federal district court in Virginia against general contractor, on ground that general contractor negligently caused employee's injuries, though such action was not maintainable under Virginia compensation law. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; Code Va. 1950, § 65-58; 33 U. S. C. A. § 901 note. *Liberty Mut. Ins. Co., et al. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, and employee and subcontractor's insurer, which had paid workmen's compensation to employee, sought recovery in Virginia from general contractor, on ground that general contractor negligently caused employee's injuries, courts in Virginia, including federal tribunals, could treat the District of Columbia Compensation Law with its privilege of suing the general contractor as a constituent of employee's contract of employment. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; Code Va. 1950, § 65-58; 33 U. S. C. A. § 901 note. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

GENERAL CONTRACTOR AS "THIRD PERSON"

Since the District of Columbia Compensation Law is an adaptation of the Longshoremen's and Harbor Workers' Compensation Act, it will by analogy be interpreted to render a general contractor suable as a "third person" by an employee of a subcontractor. Longshoremen's and Harbor Workers' Compensation Act, § 1 et seq., 33 U. S. C. A. § 901 et seq.; 33 U. S. C. A. § 901 note. *Liberty Mutual Ins. Co. et al. v. Donovan* (1955, 95 U. S. App. D. C. 49, 218 F. 2d 860).

LOSS OF CONSORTIUM

Payment of compensation under Longshoremen's and Harbor Workers' Compensation Act barred claim of employee's wife against employer for loss of consortium. *A. Thomas v. Central Linen Co.* (1959, 105 U.S. App. D.C. 49, 263 F. 2d 495).

REVIEW

A deputy employees' compensation commissioner's determination sustained by District Court, fixing injured employee's wage-earning capacity, on which award of compensation for permanent partial disability was based, at smaller sum per week than wages actually received by him before and after injury, pursuant to finding that his post-injury wages did not reasonably represent his wage-earning capacity, will not be disturbed by Court of Appeals. *Liberty Mutual Insurance Co. et al. v. Britton et al.* (1957, 100 U. S. App. D. C. 236, 243 F. 2d 659).

SUMMARY JUDGMENT

Where injured employee had received hospital treatment and compensation under Longshoremen's and Harbor Workers' Compensation Act, and brought action against employer to recover damages apart from compensation statute, but set forth no cause of action against employer in which there was any genuine issue of material fact bearing upon claim for damages other than amounts due under compensation statute, summary judgment was properly entered for employer. *A. Thomas v. Central Linen Co.* (1959, 105 U.S. App. D.C. 49, 263 F. 2d 495).

WIDOW

Even though purported widow of deceased employee had been deserted by him and had received no contribution from him for support, where such widow had borne another man's children and had received regular weekly support from him and registered herself as his wife in hospital when having such children, and where, within week after employee's death, widow and other man lived together in common law relationship, she was not "widow" within meaning of Workmen's Compensation Law.

Liberty Mutual Ins. Co. et al. v. Donovan (1955, 95 U. S. App. D. C. 49, 218 F. 2d 860).

WIDOW'S ACCEPTANCE OF AWARD BARS OTHER REMEDIES

Where widow had accepted award of benefits under Workmen's Compensation Act, all rights to damages had been superseded by provisions of act, and she could not maintain action against employer for loss of consortium for death of husband. *Myrtle V. Brown v. Curtin & Johnson, Inc.* (1955, 95 U. S. App. D. C. 234, 221 F. 2d 106).

Chapter 6.—PAYMENT AND COLLECTION OF WAGES

Sec.

36-601. Definitions.

36-602. When wages must be paid—Exceptions.

36-603. Payment of wages of discharged employee—
Payment of wages of employee who resigns—
Payment of wages when work is suspended as
a result of labor dispute—Liability of employer
for failure to pay wages in accordance with this
section.

36-604. Unconditional payment of wages conceded to be due.

36-605. Provisions of law may not be waived.

36-606. Enforcement, records and subpoenas.

36-607. Penalties.

36-608. Employees' remedies.

36-609. Commissioners may delegate functions.

36-610. Separability of provisions.

§ 36-601. Definitions.

Whenever used in this chapter, (a) "employer" includes every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia: *Provided*, That the word "employer" shall not include the Government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act.

(b) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Commissioners of the District of Columbia).

(c) "Wages" mean monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(d) "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents.

(e) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1.)

EFFECTIVE DATE

1956—Section 11 of the act of August 3, 1956, cited to text, provides that the act shall take effect sixty days after its approval. [Oct. 2, 1956.]

§ 36-602. When wages must be paid—Exceptions.

Every employer shall pay all wages earned to his employees at least twice during each calendar month,

on regular paydays designated in advance by the employer: *Provided, however,* That an interval of not more than ten working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization: *Provided further,* That where, by contract or custom, an employer has paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 2.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-603. Payment of wages of discharged employee—Payment of wages of employee who resigns—Payment of wages when work is suspended as a result of labor dispute—Liability of employer for failure to pay wages in accordance with this section.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees—

(a) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge: *Provided, however,* That in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of four days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(b) Whenever an employee (not having a written contract of employment for a period in excess of thirty days) quits or resigns, the employer shall pay the employee's wages due upon the next regular payday or within seven days from the date of quitting or resigning, whichever is earlier.

(c) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular payday, designated under section 36-602, wages earned at the time of suspension.

(d) If an employer fails to pay an employee wages earned as required under subsections (a), (b), and (c) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required; or an amount equal to the unpaid wages, whichever is smaller: *Provided, however,* That for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-604. Unconditional payment of wages conceded to be due.

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the time required by sections 36-602 and 36-604: *Provided, however,* That acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with sections 36-602 and 36-604, only if there exists a bona fide dispute concerning the amount of wages due. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 4.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-605. Provisions of law may not be waived.

Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-606. Enforcement, records and subpoenas.

The Commissioners shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for penalties provided hereunder. Any and all prosecutions of violations of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants.

(b) The Commissioners shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before them.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Municipal Court for the District of Columbia or any judge thereof, on application by the Commissioners, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-607. Penalties.

Any employer who, having the ability to pay, willfully violates any provisions of section 36-602 or section 36-604 or who fails to comply with any other provisions of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be punished by a fine of not more than \$300, or by imprisonment of not more than

thirty days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or more than ninety days, or in the discretion of the court, by both such fine and imprisonment. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-608. Employees' remedies.

(a) Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages. Whenever the Commissioners determine that wages have not been paid, as herein provided and that such unpaid wages constitute an enforceable claim, the Commissioners may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, may bring any appropriate legal action necessary to collect such claim and may join in one proceeding or action such claims against the same employer as the Commissioners deem appropriate. Upon any such assignment the Commissioners shall have power to settle and adjust any such claim or claims on such terms as they may deem just.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. Such attorney's fees in the case of actions brought under this subsection by the Commissioners shall be deposited in the Treasury of the United States to the credit of the District of Columbia. The Commissioners shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 8.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-609. Commissioners may delegate functions.

The Commissioners are authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon them by this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 9.)

EFFECTIVE DATE

1956—See note under section 36-601.

§ 36-610. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 3, 1956, 70 Stat. 979, ch. 924, § 10.)

EFFECTIVE DATE

1956—See note under section 36-601.

TITLE 38.—LIENS

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38-110. How lien enforced.

NOTES TO DECISIONS

ARBITRATION

Where proceeding was commenced by bill in equity, and, when case was reached for trial, continuance was granted for cause shown that arbitration proceedings were in progress, and parties knew that court's judgment was suspended pending award of arbitrators, the arbitration agreement achieved status of a "stipulation" and would be enforced as a rule of court. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 98 U. S. App. D. C. 8, 231 F. 2d 761).

CONTINUANCE

The Court of Appeals would take judicial notice of practice of the District Court that no case can be continued by the assignment commissioner but that continuance can be only upon order of assignment judge for cause shown. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 98 U. S. App. D. C. 8, 231 F. 2d 761).

§ 38-121 [25: 371]. No action by subcontractor against owner.

NOTES TO DECISIONS

PERSONAL OBLIGATION

Subcontractor is not entitled to personal judgment against owner of premises for money due him from general contractor, but a personal, new and direct promise by owner to pay for work, though not in writing, is enforceable and not violative of statute of frauds, provided such promise is supported by sufficient consideration, and such agreement is construed to be promise by owner to pay his own debt and not antecedent debt of contractor. *Arthur Snowden Co., Inc. v. Mary D. Meehan* (D. C. Mun. App. 1955, 118 A. 2d 687).

In subcontractor's action against owner of premises for reasonable value of work performed on houses, evidence would not sustain subcontractor's contention that owner had, after contractor's default on original contract, requested subcontractor to continue work and orally promised to pay him reasonable value thereof. *Id.*

WHEN OWNER LIABLE TO SUBCONTRACTOR

Where electrical contractor who initially undertook job at instance of general contractor could have quit the job because of general contractor's default, and he only agreed to continue in consideration of homeowner's personal new and direct agreement to pay for the work, homeowner was not relieved of obligation to pay, though his promise was merely verbal. *Robert W. Thomas v. Ray Ehrmantraut* (D. C. Mun. App. 1955, 111 A. 2d 623).

A promise need not be in writing when it is an original or separate agreement to pay and not the mere assumption of another's debt. *Id.*

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN Sec.

38-204. Lien of liverymen.

38-205. Lien for storage, repairs and supplies for motor vehicles.

38-206. Enforcement of lien by sale.

38-207. Application of proceeds of sale.

38-208. Limitation on lien for storage.

38-209. Liens acquired under prior law.

§ 38-201 [13: 4]. Repealed June 3, 1952, 66 Stat. 98, ch. 361, § 6.

Provisions relating to liens of garage keepers and liverymen are now set out in sections 38-204 to 38-209.

NOTES TO DECISIONS

BANKRUPTCY

Where garage keeper, having a subsisting lien upon bankrupt's automobile, lawfully regained and held possession of automobile before owner was adjudicated a bankrupt, garage keeper had a statutory lien valid against the trustee in bankruptcy, even though it arose and was perfected while the bankrupt was insolvent and within four months of filing of petition in bankruptcy. *Gordon v. Sullivan* (1951, 88 U. S. App. D. C. 144, 188 F. 2d 980).

POSSESSION

Where garage keeper performed repairs upon an automobile, and turned over automobile to its owner, but garage keeper subsequently resumed possession of automobile, garage keeper had a lien on automobile by operation of law and did not lose it by failing to give statutory notice. *Gordon v. Sullivan* (1951, 88 U. S. App. D. C. 144, 188 F. 2d 980).

Where garage keeper made repairs upon an automobile and turned it over to the owner, and garage keeper subsequently repossessed the automobile from a third party by paying storage charges on automobile, garage keeper's taking and retention of automobile were lawful and he was entitled to retain possession as against the owner's trustee in bankruptcy. *Gordon v. Sullivan* (1951, 88 U. S. App. D. C. 144, 188 F. 2d 982).

§ 38-202 [13: 5]. Enforcement of lien by sale.

CROSS REFERENCE

This section not applicable to sections 38-204 and 38-205; see section 38-209.

§ 38-203 [13: 6]. Enforcement of lien by bill in equity.

CROSS REFERENCE

This section not applicable to sections 38-204 and 38-205; see section 38-209.

NOTES TO DECISIONS

CONVERSION

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Mattie M. Bullock v. George Young et ano.* (D. C. Mun. App. 1955, 118 A. 2d 917).

§ 38-204. Lien of liverymen.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however,* That before enforcing the lien hereby given notice in writing shall be given to such owner in person or by registered mail at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. (June 3, 1952, 66 Stat. 96, ch. 361, § 1.)

CROSS REFERENCE

This section not affected by sections 38-202 and 38-203; see section 38-209.

NOTES TO DECISIONS

CONVERSION

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of con-

ditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Mattie M. Bullock v. George Young et ano.* (D. C. Mun. App. 1955, 118 A. 2d 917).

§ 38-205. Lien for storage, repairs and supplies for motor vehicles.

All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over all other liens or rights in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, all lien holders shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or \$21 per week, which additional charge shall in no event cover a period in excess of ninety days. (June 3, 1952, 66 Stat. 97, ch. 361, § 2.)

CROSS REFERENCE

This section not affected by sections 38-202 and 38-203; see section 38-209.

NOTES TO DECISIONS

AUTHORITY OF DIRECTOR OF VEHICLES AND TRAFFIC

Sole function of Director of Vehicles and Traffic under automobile lien statute is to satisfy himself that lienor has complied with notice provisions thereof. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

CONVERSION

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Mattie M. Bullock v. George Young et ano.* (D. C. Mun. App. 1955, 118 A. 2d 917).

EXTENT OF LIEN

Where automobile owner contracted with garage keeper for small repair job and, despite repeated promises to call for automobile, left it with garage keeper who was required to provide valuable space for its storage, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under

automobile lien statute. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

NOTICE OF LIEN

Garage owner, who did not give notice of lien until he had stored automobile for six months after repairing it, did not lose his lien or his right to claim storage thereby even though automobile lien statute allowed such notice after 30 days. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

§ 38-206. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38-204 or 38-205 hereof is not paid by the end of thirty days after the giving of notice, then the party entitled to such lien may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District. Said advertisement shall set forth the date, time, and place of sale, which shall not be less than fifteen days from date of the first publication of such notice, that the purpose of the sale is to satisfy a lien, the amount for which said lien is claimed, including storage to date of sale if allowable, the names of all interested parties, and a description of the chattel, including, in the case of vehicles, the make, type, year and model number, serial number and engine number, if any, and State or District license number and year.

Any person selling such property in order to satisfy a fraudulent, excessive, or unreasonable lien shall be guilty of a conversion of such property and liable to the owner in damages therefor. (June 3, 1952, 66 Stat. 97, ch. 361, § 3.)

§ 38-207. Application of proceeds of sale.

The proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien; second, to payment of other liens, if any, in the order of their priority; and, third, to the owner of the property. (June 3, 1952, 66 Stat. 97, ch. 361, § 4.)

§ 38-208. Limitation on lien for storage.

To the extent that any lien provided for in this chapter is based on a claim for storage of a motor vehicle in excess of \$150, such lien shall be, as to such excess, inferior to the lien of a conditional vendor or chattel mortgagee (as defined in section 38-205) claiming under an instrument recorded on a date earlier than the period to which such charges are attributable. (June 3, 1952, 66 Stat. 97, ch. 361, § 5.)

§ 38-209. Liens acquired under prior law.

Section 38-201 is hereby repealed and sections 38-104, 38-125, 38-202, 34-105, 38-126 and 38-203 are hereby made inapplicable to liens provided for in sections 38-204 and 38-205 hereof: *Provided, however,* That any liens heretofore acquired under the provisions of said section 38-201, shall be unaffected by the repeal of said section and may be enforced either in the manner provided in said sections 38-104, 38-125, 38-202, 34-105, 38-126 and 38-203 or in the manner provided herein. (June 3, 1952, 66 Stat. 98, ch. 361, § 6.)

TITLE 39.—MILITARY

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

§ 39-107 [20: 1453]. Organization of National Guard units.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

Chapter 2.—COMMISSIONED OFFICERS

§ 39-201 [20: 1447]. Commanding general — Appointment and removal—Rank.

There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, or major general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 1.)

AMENDMENTS

1957—Act of September 2, 1957, cited to text, inserted the words “or major general” into the section.

§ 39-205 [20: 1451]. Retired Army Officer may be detailed as adjutant-general.

The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the commanding general of the District of Columbia militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. (June 6, 1900, 31 Stat. 671, ch. 811; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 2.)

STATUTORY REFERENCE

See U. S. C., title 32.

AMENDMENTS

1957—Act of September 2, 1957, cited to text, struck out the words “brigadier-general commanding” and inserted in lieu thereof “commanding general of”.

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§ 39-212 [20: 1461]. Special examination of officer's capability—Certificate to President.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

Chapter 4.—ENLISTED PERSONNEL

§ 39-401 [20: 1465]. Term of enlistment—Re-enlistment.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

§ 39-501 [20: 1470]. Uniform, arms, and equipment—Issuance by War Department.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

§ 39-504 [20: 1473]. Returns of equipment.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

§ 39-516 [20: 1488]. Use of Washington Barracks.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title II.

Chapter 8.—PAY AND ALLOWANCES

§ 39-804 [20: 1506]. Subsistence while on duty.

CHANGE OF NAME

The title of the Secretary of War included in this section was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, 61 Stat. 601, ch. 343, Title II.

TITLE 40.—MOTOR VEHICLES

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

§ 40-101. Definitions.

NOTES TO DECISIONS

"OPERATE," DEFINED

In view of statute dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

OWNERS

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title was defective and automobile was still registered in sellers' names. *Adella C. Burt, Archibald Burt and Wm. W. Mumford v. Henry Cordover and Cella Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

§ 40-102 [20: 968a]. Registration of motor vehicles and trailers — Certificates — Tags — Duplicates — Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.

* * * * *

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this title, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of \$1 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40-103, in case the latter is the greater. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be \$1.

* * * * *

(Aug. 17, 1937, 50 Stat. 680, ch. 690, § 2, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat. 792, ch. 921, § 3; May 18, 1954, 68 Stat. 111, ch. 218, § 601; Apr. 6, 1956, 70 Stat. 102, ch. 182, § 1.)

AMENDMENTS

1956—The act of April 6, 1956, cited to text, amended subsection (d) by adding the matter above set out immediately following the first sentence thereof.

1954—The act of May 18, 1954, amended subsection (d) of the section by deleting the second sentence of that subsection.

This amendment was made effective April 1, 1955, by section 610 of the act which provided that the amendments would take effect on the first day of April following the enactment of the act by 90 days or more.

TRANSFER OF FUNCTIONS

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953 and made effective August 15, 1953, established under the direction and control of the Engineer Commissioner, a Department of Vehicles and Traffic, headed by a Director. The new department is to provide for the planning of traffic and parking facilities and the administration of the Motor Vehicle laws of the District. A Commissioners' Traffic Advisory Board was established, and the members of the former board re-appointed. The previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency were abolished by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

PURPOSE

Purpose of Vehicle Title and Registration Regulations was to make it extremely difficult, if not impossible, to perpetrate fraudulent automobile transfers. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

§ 40-103 [20: 968b]. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under sections 40-101 to 40-105, the registration fee provided in this section.

(b) Class A. For each gasoline-propelled passenger vehicle, including passenger vehicles licensed under paragraph (b) or paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand five hundred pounds, \$22; three thousand five hundred pounds or more, \$32.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each gasoline-propelled truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator, with the exception of passenger vehicles licensed under paragraph (b) of section 47-2431.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$40; three thousand pounds or more but less than four thousand pounds, \$44; four thousand pounds or more but less than five

thousand pounds, \$52; five thousand pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than seven thousand pounds, \$68; seven thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than nine thousand pounds, \$84; nine thousand pounds or more but less than ten thousand pounds, \$96; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand pounds or more but less than fourteen thousand pounds, \$142; fourteen thousand pounds or more but less than sixteen thousand pounds, \$172; sixteen thousand pounds or more, \$202: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, \$8; five hundred pounds or more but less than one thousand pounds, \$12; one thousand pounds or more but less than one thousand five hundred pounds, \$20; one thousand five hundred pounds or more but less than two thousand five hundred pounds, \$32; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$46; three thousand five hundred pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than ten thousand pounds, \$92; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand pounds or more but less than sixteen thousand pounds, \$152; sixteen thousand pounds or more, \$182: *Provided*, That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$12.00.

Class E. For each motor vehicle classified by the Commissioners or their designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, \$5.

Class F. For dealers' identification tags, first three sets of tags, \$50, and \$10 for each additional set.

(c) When application for registration of any motor vehicle or trailer or for registration as a dealer or for issuance of dealers' identification tags is received by the director on or after October 1, the registration fee, or the fee for issuance of dealers'

identification tags shall be one-half the amount otherwise provided.

(d) Proceeds from fees payable under this chapter shall be divided between the General Fund and the Highway Fund. The Commissioners are authorized and empowered to determine the percentage of all proceeds from fees payable under this chapter which shall be deposited to the credit of the General Fund of the District of Columbia: *Provided*, That the percentage of proceeds deposited to the credit of the General Fund shall be not less than sixty-four per centum or more than seventy-four per centum of all proceeds from fees payable under this chapter. The remainder of such proceeds payable under this chapter, all moneys collected from the motor-vehicle-fuel tax, and fees charged for the titling of motor vehicles and trailers, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however*, That the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created.

(e) Notwithstanding the provisions of this chapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and class C of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, ch. 218, §§ 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, §§ 1, 2.)

AMENDMENTS

1957—Section 1, of the act of September 2, 1957, cited to text, struck out Class C in subsection (b) and substituted a new Class C as above set out.

Section 2 of the same act also inserted into the section a new Class E, as above set out.

1954—The act of May 18, 1954, amended the section in order to provide a "flat fee" system of registration fees based on the weight of the vehicle in place of the previous system of combined registration fees and personal property taxes on motor vehicles.

The act increased the registration rates in classes A, B, C, D, and E; and amended subsection (d) so as to provide that the proceeds from fees paid under the chapter be divided between the General Fund and the special Treasury account as provided in the section.

The amendments were made effective on April 1, 1955, by section 610 of the act which provided that the amendments would take effect on the first day of April following the enactment of the act by 90 days or more.

Chapter 3.—OPERATORS' PERMITS

§ 40-301 [6:244]. Operators' permits — Application — Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit.

(a) (1) The Commissioners or their designated agent shall, upon application, the payment of a fee of \$3, and compliance with such regulations as the Commissioners or their designated agent may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of three years, to any individual sixteen years of age or over who, after examination, in the opinion of the Commissioners or their designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Commissioners or their designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Commissioners or their designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Commissioners or their designated agent. Should the Commissioners or their designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, they or their agent may refuse the issuance or reissuance thereof. No operator's permit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motor bicycle, used solely for purposes of pleasure and not for compensation.

(2) The Commissioners or their designated agent may, upon application and the payment of a fee of \$1, issue a learner's permit, valid for a period of sixty days, to any applicant for a motor vehicle operator's permit, sixteen years of age or over, who has successfully passed all parts of the examination other

than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle, used solely for purposes of pleasure and not for compensation, when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

(3) Any pupil fifteen years of age or over enrolled in a high school or junior high school driver education and training course approved by the Commissioners or their designated agent may, without obtaining either an operator's or a learner's permit, operate a dual-control motor vehicle at such times as such pupil is under instruction and accompanied by a licensed motor-vehicle driving instructor: *Provided*, That such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(4) In case of the loss of an operator's permit or a learner's permit, the individual to whom such permit was issued shall forthwith notify the commissioners or their designated agent, who shall furnish such individual with a duplicate permit. The fee for each such duplicate permit shall be 50 cents.

(5) Enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate Government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a Government vehicle and are qualified to drive, and upon proving to the satisfaction of the director of vehicles and traffic that they are familiar with the traffic regulations of the District of Columbia.

(6) Notwithstanding the provisions of this subsection, the Commissioners or their designated agent may, upon compliance with such regulations as they or their designated agent may prescribe, extend for a period not in excess of six years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the Armed Forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(b) Each operator's permit shall state the name and address of the permittee, together with such other matter as the Commissioners or their designated agent may by regulation prescribe, and shall bear the signature of the permittee.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall upon conviction thereof, be fined not less than \$2 nor

more than \$40: *Provided*, That this shall not apply to transient visitors from States in the Union which do not require drivers' permits.

(d) No individual shall operate a motor vehicle in the District, except as provided in section 40-303, without first having obtained an operator's permit or a learner's permit issued under the provisions of this chapter. Any individual violating any provision of this subdivision shall, upon conviction thereof, be fined not more than \$300 or be imprisoned not more than ninety days.

(e) Nothing in this chapter shall relieve any individual from compliance with section 47-2331 (e). (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2.)

AMENDMENTS

1956—Section 2 of the act of July 24, 1956, amended subsection (a) (2) by striking out the word "District".

1954—Section 1 of the act of August 16, 1954, amended the first paragraph of subsection (a) by designating the \$3 fee and providing for the issuance of operators permits in accordance with regulations of the Commissioners for not to exceed three year periods. The subsection was further amended to permit the Director of Vehicles and Traffic to waive the road test for an applicant presenting a license from a State having equivalent standards.

Section 2 of the act amended paragraph 2 of subsection (a) to permit the issuance of a learner's permit for 60 days.

Section 3 of the act added a new paragraph (6) to subsection (a).

Section 4 of the act amended subsection (b) so as to eliminate the requirement that judges make a notation of traffic violations on the permit.

Section 5 of the act repealed former subsection (d) and renumbered former subsections (e) and (f) as present subsections (d) and (e).

The amendments were made effective 30 days after enactment by section 9 of the act.

EFFECTIVE DATE OF AMENDMENT

1956—Section 3 of the act of July 24, 1956, provided that it shall take effect thirty days after its approval.

TRANSFER OF FUNCTIONS

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953 and made effective August 15, 1953, established under the direction and control of the Engineer Commissioner, a Department of Vehicles and Traffic, headed by a Director. The new Department is to provide for the planning of traffic and parking facilities and the administration of motor vehicle laws of the District. The previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency were abolished by the order. The organization of the new department as set out in the order, included a Driver Improvement Section having cognizance over operators' permit matters. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

CAUSAL CONNECTION

In action by child and others against automobile owners, father and son, for injuries received when child

was pinned to school bus from which she had just alighted by owners' automobile which was then being driven by father's employee without owners' permission, questions whether father was negligent in permitting employee to have access to the automobile and whether there was causal connection between such negligence and injury were for jury. *Sheila Ilina Boland, etc. v. J. Spencer Love et al.* (1955, 95 U. S. App. D. C. 337, 222 F. 2d 27).

CHANGE OF RESIDENCE

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

CONSTRUCTION

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a State from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

EVIDENCE

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

LAW OF FORUM

Where, in personal injury action, which arose from automobile accident occurring in Virginia, but which was brought in Federal District Court in District of Columbia in which defendants resided, court was unable to determine from Virginia decisions standard of conduct to be required of the parties, District of Columbia law would be referred to to determine such standard. *Sheila Ilina Boland etc. v. J. Spencer Love et al.* (1955, 95 U. S. App. D. C. 337, 222 F. 2d 27).

"OPERATE," DEFINED

In view of statute dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

§ 40-302 [6:250]. Revocation or suspension of operator's permits—Procedure—New permit after revocation—Nonresidents—Penalty.

COMPILER'S NOTE

The provisions in subsection (a) relating to the review of decisions in the United States Court of Appeals have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

NOTES TO DECISIONS

ACTUAL PHYSICAL CONTROL

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering wheel, and motor was running, in absence of any explanatory testi-

mony from defendant, trial court was justified in finding that defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence "operating" the automobile within meaning of statute prohibiting operation during period for which operator's permit has been revoked. *G. Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

AUTHORITY TO REVOKE

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *C. Tillman v. Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1958, 144 A. 2d 922).

GROUND FOR REVOCATION

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *John Henry Lambert v. Board of Commissioners of District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 926).

INSTRUCTIONS TO JURY

In prosecution for operating a motor vehicle in the District of Columbia during period for which defendant's operator's permit had been revoked, charge that there was no dispute as to fact that defendant's permit had been revoked and that he had driven in the District was not erroneous in view of defendant's statement in final argument that prosecutor's statement that defendant was driving a motor vehicle on a street in the District was substantially true. *Mathews v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 650).

In prosecution for operating a motor vehicle in District of Columbia during period for which defendant's operator's permit had been revoked, failure of court to charge that if the Government failed to prove each element of the offense beyond a reasonable doubt, the jury should find the defendant not guilty, was error but not prejudicial in view of defendant's failure to request such instruction and failure to object to charge as given and in view of charge that jury was sole judge of facts and that it was their duty as finders of the facts to reach a verdict on the testimony. *Id.*

"OPERATOR" DEFINED

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within statute prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *G. Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

PUBLIC SIDEWALK

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering-wheel, and motor was running, conviction of operating a motor vehicle during period for which his operator's permit had been revoked was not invalid on ground that traffic stat-

utes and regulations were directed at operation of motor vehicles on public highways since a public sidewalk is part of the public highway. *G. Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

REASONABLE REGULATION

Point system which provides for the assessment of points against the motorist for moving traffic violations and for suspension of the motorist's operating permit upon accumulation of eight points, is a reasonable regulation concerning the control of traffic and Board of Commissioners had the authority under statute to enact such a system. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

STATUTORY RIGHT OF REVIEW

Where statute authorized the Board of Commissioners of District of Columbia to delegate any of its functions to other agencies and the Board did delegate its right to review action of Department of Vehicles and Traffic in revoking a motorist operator's permit to the Director of Vehicles and Traffic, motorist who had his operator's permit revoked was not denied statutory right of having his case reviewed by the commissioners when it was reviewed by the Board's legally delegated authority. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

§ 40-303 [6:245]. Nonresidents exempt from registration—Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Commissioners or their designated agent have previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The Commissioners or their designated agent shall from time to time ascertain such privileges and cause their or his findings to be promulgated. When the laws of any State, Territory, or possession of the United States or of a foreign country or of a political subdivision thereof contain a reciprocity provision similar to that hereinabove set forth, or the privilege extended to a legal resident of the District is for the remaining portion of the current District of Columbia registration year, then the owner of any motor vehicle who is a legal resident of such State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof shall comply with the provisions of section 40-301 and with every other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District at the time of the expiration of the current motor vehicle registration issued to such owner by such State, Territory, or possession of the United States or a foreign country or political subdivision thereof,

unless the Commissioners or their designated agent shall have entered into a reciprocal agreement or arrangement with the duly authorized representatives of such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, further to limit or to extend the period of time during which the validity of the motor vehicle registration and identification tags of such State, Territory, or possession of the United States or foreign country or political subdivision thereof shall be recognized by the District. The Commissioners or their designated agent are hereby authorized and empowered to enter into reciprocal agreements and arrangements as aforesaid. The following persons shall, with respect to the registration of motor vehicles and the licensing of operators thereof, if they have complied with the laws of the State, Territory, or possession from which they have been elected or appointed, or of which they are legal residents, be exempt during their respective terms of office or during the period of their employment as administrative employees from compliance with section 40-301 and with any other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District: Senators and Representatives in Congress; Delegates to Congress; Resident Commissioners; administrative employees of Senators, Representatives, Delegates, and Resident Commissioners who are legal residents of the State, Territory, or possession from which said Senators, Representatives, Delegates, and Resident Commissioners have been elected or appointed; and officers of the executive branch of the Government of the United States who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

(b) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 40-301. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6.)

AMENDMENTS

1954—The act of August 16, 1954, amended subsection (a) of the section to authorize the District to enter into reciprocity agreements on registration of vehicles and

licensing of drivers and to clarify the application of laws in the case of similar reciprocity provisions.

The act added a new provision exempting certain Government officials from the requirement of registering personal motor vehicles and licensing operators in the District. The exemption was extended to administrative employees of Members of Congress, Delegates, and Resident Commissioners.

The amendments were made effective 30 days after enactment by section 9 of the act.

NOTES TO DECISIONS

CHANGE OF RESIDENCE

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

CONSTRUCTION

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a state from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

EVIDENCE, SUFFICIENCY OF

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

GOVERNMENTAL FUNCTION

Torts committed by officers and employees of the District of Columbia while in the exercise of governmental functions, cannot be made the basis of liability in a suit against District.

Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 199, 225 F. 2d 38).

OWNERS

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. *Adella C. Burt, Archibald Burt and William W. Mumford v. Henry Cordover and Cella Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

Chapter 4—MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

Sec.

40-401 to 40-416. Repealed.

40-417. Citation of chapter.

40-418. Definitions.

40-419. Administration by Commissioners.

40-420. Review by Commissioners.

40-421. Abstract of operating record.

40-422. Information regarding financial responsibility to be furnished person injured.

40-423. Service of process on nonresident.

40-424. Operator deemed to be agent of owner.

40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.

Sec.

- 40-426. Report of accident required.
- 40-427. Form of accident report.
- 40-428. Incapacity of person to make an accident report.
- 40-429. Additional information concerning accident to be furnished on request.
- 40-430. Suspension of license for failure to report.
- 40-431. Accident reports to be confidential.
- 40-432. Application of chapter—Amount.
- 40-433. Determination of the amount of security.
- 40-434. Exceptions to requirements as to security and suspension.
- 40-435. Automobile liability policy or bond—Requirements.
- 40-436. Security—Form and amount.
- 40-437. Failure to deposit security—Suspension.
- 40-438. Release from liability.
- 40-439. Adjudication of nonliability—Release from requirement of the deposit of security.
- 40-440. Agreements for payment of damages.
- 40-441. Payment upon judgment—Release of judgment debtor.
- 40-442. Termination of security requirement.
- 40-443. Duration of suspension.
- 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.
- 40-445. Commissioners authorized to decrease amount of security.
- 40-446. Correction of Commissioners' action within one year.
- 40-447. Disposition of security.
- 40-448. Return of deposit.
- 40-449. Matters not to be evidence in civil suits.
- 40-450. Persons required to deposit proof of future financial responsibility.
- 40-451. Proof of financial responsibility for the future.
- 40-452. "Judgment" and "State" defined.
- 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State or a political subdivision thereof—Suspension for out of District convictions.
- 40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.
- 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioners.
- 40-456. Suspension of nonresident's operating privilege—Duration.
- 40-457. Report by courts of nonpayment of judgments.
- 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.
- 40-459. Suspension for nonpayment of judgment.
- 40-460. Government vehicles—Exception as to nonpayment of judgment provisions.
- 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.
- 40-462. Commissioners finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.
- 40-463. Continuance of suspension until judgment paid and proof given.
- 40-464. Discharge in bankruptcy.
- 40-465. Required payments—Amounts—Settlements.
- 40-466. Installment payment of judgments—Default.
- 40-467. Breach of agreement to pay in installments.
- 40-468. Proof required for each registered vehicle.
- 40-469. Alternate methods of giving proof.
- 40-470. Certificate of insurance as proof.
- 40-471. Certificate filed by nonresident as proof of financial responsibility.
- 40-472. Default by nonresident insurance carrier.
- 40-473. "Motor-vehicle liability policy" defined.
- 40-474. Notice of cancellation or termination of certified policy.

Sec.

- 40-475. Provisions of chapter not to affect other policies.
- 40-476. Surety bond as proof of financial responsibility.
- 40-477. Bond a lien against scheduled real estate—Recording—Notice.
- 40-478. Action on bond.
- 40-479. Deposit of money with Commissioners—Certificate—Evidence of no unsatisfied judgments.
- 40-480. Application of money deposit—Limits.
- 40-481. Owner of a motor vehicle may give proof for others.
- 40-482. Substitution of proof.
- 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.
- 40-484. Duration of proof—Cancellation or return of proof.
- 40-485. Transfer of registration to defeat purpose of chapter.
- 40-486. Surrender of license and registration.
- 40-487. Failure to report accident—Penalty.
- 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.
- 40-489. Operating motor vehicle when license suspended or revoked.
- 40-490. Failure to return license or registration—Penalty.
- 40-491. Penalty for violations of Motor Vehicle Safety Responsibility Act.
- 40-492. Jurisdiction of the Municipal Court for the District of Columbia as to prosecutions for violations of provisions of chapter.
- 40-493. Vehicles insured under other laws—Exceptions.
- 40-494. Self-insurers.
- 40-495. Appropriations authorized.
- 40-496. Retroactive application of the Motor Vehicle Safety Responsibility Act of the District of Columbia.
- 40-497. Provisions of chapter not to prevent other processes provided by law.
- 40-498. Interpretation of provisions of the chapter.
- 40-498a. Effect of Reorganization Plan Number 5 of 1952.
- 40-498b. Constitutionality—Partial Invalidity.
- 40-498c. Effect of prior law—Repeal.

§§ 40-401 to 40-416. Repealed. May 25, 1954, 68 Stat. 120, ch. 222, § 82. Effective May 25, 1955.

Sections, act of May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-17, related to the financial responsibility of owners and operators of motor vehicles which is covered by sections 40-417 to 40-498.

NOTES TO DECISIONS UNDER PRIOR LAW

AGENT OF OWNER

Negligence of driver who was taking lady home at her request in her husband's automobile, was attributable to husband, under District of Columbia statute making one who operates automobile with owner's consent the agent of the owner in case of accident, in his action against motor carrier for expenses due to collision with its truck and in carrier's counterclaim against him, in absence of sufficient evidence to overcome prima facie case of consent arising, by statute, from husband's ownership. *Baber v. Akers Motor Lines* (1954, 94 U. S. App. D. C. 211, 215 F. 2d 843).

In action against truck owners for damages caused by employee, where statutory presumption that owners had consented to such employee's driving truck was rebutted by uncontradicted proof that he had no authority to drive, fact that authorized employee-driver had turned truck over to unauthorized employee to park it did not establish owners' liability under principles of master and servant relationship, in view of fact that transfer of possession took place. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

ATTORNEY'S FEES

Where it was clear that statute providing for institution in District of Columbia of automobile negligence action against nonresident, had been invoked against defendant, that defendant engaged attorney and came

into District to defend suit, and that plaintiff failed to prevail in the action, defendant was entitled, in absence of special circumstances or presentation of reason to contrary to an attorney's fee under bond executed by plaintiff as required by statute. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

Where motion by nonresident defendant for attorney's fee under bond executed by unsuccessful plaintiff in automobile negligence action was presented to same judge who tried case, judge could have fixed amount of fee without taking evidence on the subject, since he was considered to be an expert on the value of legal services. *Id.*

BURDEN OF PROOF

Financial Responsibility Act providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver operated automobile with owner's consent casts burden of proof as to question of consent upon owner of automobile. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

CONSENT OF OWNER

Where lessee of taxicab obeyed lessor's instructions not to permit any one else to drive taxicab, but, after locking ignition, left keys on radio in her apartment, and another person obtained such keys without lessee's knowledge and became involved in automobile accident, owner did not consent to such use and was not liable for the accident. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

CONSTRUCTION

Financial Responsibility Act authorizing substituted service on nonresident motorist imposes a contractual obligation in derogation of common law, affects substantial rights, and has effect of conferring jurisdiction upon courts where none existed before, and hence it must be strictly construed and strictly complied with. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

DIRECTED VERDICT

Under statute making proof of ownership of motor vehicle involved in accident prima facie evidence that driver was operating vehicle with owner's consent, where ownership is proved in defendant who offers no credible evidence to negative the statutory presumption, plaintiff who has otherwise established liability is entitled to directed verdict. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

IDENTITY AND STATUS OF OPERATOR

Although presumption, arising under Owners' Financial Responsibility Act by virtue of ownership of vehicle, that vehicle, driven by person other than owner when involved in accident, was being driven with consent of owner and thereby as agent of owner, ceases when confronted with uncontradicted denial by owner of giving of consent, when uncontradicted denial is self-contradictory and inconsistent, it becomes question for jury as to credibility of witness and as to whether presumption has been rebutted. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

Under Owners' Financial Responsibility Act which raises presumption of consent by owner to driving of his automobile by another person involved in accident upon showing of single fact of ownership, where there was uncontradicted testimony of owner and his agents which was not self-contradictory that automobile was driven without consent by third party when accident occurred, it was error to submit issue of owner's liability to jury. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

INJURIES TO PERSONS ON FOOT

Effect of Owners' Financial Responsibility Act declaring that where accident results when person other than owner is driving motor vehicle on highway, with express or implied consent of owner, driver shall be deemed agent of owner, and that proof of ownership shall be prima facie evidence of consent, is to place burden on owner of proving that vehicle was not operated with his express or implied consent at time of accident. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

JURY QUESTION

In action brought by automobile owner to recover for damage sustained when his automobile was struck, while parked, at night, against one whose automobile had been identified as the one doing the damage, defendant's evidence that neither he nor anyone with his consent had driven his automobile at time involved was not so uncontradicted as to justify withdrawal of matter from jury. *J. A. Love et al. v. W. Gaskins* (D.C. Mun. App. 1959, 153 A. 2d 660).

NEGLIGENCE OF DRIVER

Where defendant owned the taxicab and rented it to the driver he was legally responsible for the driver's negligence as well as his own in maintaining a door of a cab in defective condition or the negligence of the driver in failing to see that the door was closed when the trip resulting in injury to plaintiff began. *Greene et al. v. Hathaway* (1951, 89 U. S. App. D. C. 229, 191 F. 2d 656).

NONRESIDENT

Financial Responsibility Act authorizing substituted service on non-resident motorist was not intended to reach an actual resident, but was enacted to provide a means of bringing before the local court a non-resident transient motorist, and hence the statute did not apply to a motorist who was a resident at time of accident and who never thereafter became a non-resident. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

Under the District of Columbia Financial Responsibility Act authorizing substituted service on "nonresident" motorist, quoted word did not include one who had lived in the District for more than 15 months before accident and continued to live there for more than eight months after it occurred, although he was driving a vehicle using New York license plates and may have been domiciled in New York on date of accident. *Johnson v. Jacoby* (1952, 90 U. S. App. D. C. 280, 195 F. 2d 779).

OPERATION AND CONTROL

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by employee of service station and it appeared that owner at most entrusted employee with driving automobile from owner's place of work to service station, and that employee was not driving back to the station by any route at time of collision but was driving away from it. *Hudson v. Lazarus* (1954, 95 U. S. App. D. C. 16, 217 F. 2d 344).

OWNERSHIP AS EVIDENCE

Presumption created by Owners' Financial Responsibility Act that where accident results when person other than owner is driving motor vehicle on highway that there is consent by owner, continues until there is credible evidence to the contrary and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

PRESUMPTION

Upon establishment of defendant's ownership of automobile involved in accident while being driven by another, the Financial Responsibility Act creates presumption of agency and places burden of proof as to question of consent upon defendant, but defendant overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission, and is then entitled to favorable finding as matter of law, but where defendant offers some credible evidence to overcome presumption, but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *McMickle v. Nickens* (D. C. Mun. App. 1954, 104 A. 2d 409).

The statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. *Hudson v. Lazarus* (1954, 95 U. S. App. D. C. 16, 217 F. 2d 344).

In action for damage to automobiles, uncontradicted testimony by defendant truck owners that driver-employees were instructed to allow no one else to drive, and that a helper-employee who was driving truck in intoxicated condition at time of collision, had no driver's license and went out on truck only when specifically instructed to do so, overcame statutory presumption that owners had consented to helper's driving of truck. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Where action against owner of taxicab involved in accident was heard before court without jury, and trial judge's memorandum opinion did not state whether statutory presumption of agency had been overcome as a matter of law or of fact, the Municipal Court of Appeals would assume that the trial judge had found for defendant as a matter of law. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Presumption created by Owners' Financial Responsibility Act which arises by mere fact of ownership of motor vehicle that owner has consented to driving of his automobile by another person, is sufficiently rebutted by the uncontradicted denial by owner that vehicle was used with his express or implied consent. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

PURPOSE

One purpose of statute requiring that plaintiff, who institutes automobile negligence action in District of Columbia against nonresident by service of process on Director of Vehicles and Traffic, file undertaking in favor of nonresident defendant is to prevent the reckless reaching out into other jurisdictions and forcing of nonresident to come back into District to defend collision suits, and another is to reimburse a nonresident defendant for expense of successfully defending such action. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

QUESTIONS OF FACT

Where statutory presumption that defendant truck owners had consented to the driving of their truck by employee was overcome by uncontradicted proof, question of truck owners' liability to owners of automobiles struck by truck was not strictly one of fact such that trial court's decision should not be disturbed on appeal. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Upon establishment of defendant's ownership of automobile involved, the Financial Responsibility Act creates a presumption of agency and places burden of proof as to question of consent upon defendant-owner, but defendant-owner overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission and owner is then entitled to favorable finding as a matter of law, but, where defendant-owner offers some credible evidence to overcome the presumption but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Whenever presumption raised by statute providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver was operating vehicle with owner's consent is overcome by uncontradicted proof, a directed verdict for owner is proper, but if the evidence is contradictory, question of owner's liability is for the jury. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

RESIDENT

Fact that defendant operated taxicab in District of Columbia and lived "within metropolitan area" in nearby Maryland did not preclude his recovery of attorney's fee under bond executed in his favor by plaintiff who instituted in the District of Columbia an automobile negligence action against defendant as a "nonresident." *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

SUBSTITUTED SERVICE

Requirement of Financial Responsibility Act, which authorizes substituted service on non-resident motorist, that notice of such service and a copy of the process be sent by registered mail to defendant, was not met

by mailing a copy of the complaint to defendant. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

The Financial Responsibility Act of District of Columbia authorizing substituted service on nonresident motorist does not apply to one who was resident of the District at time of accident and who became nonresident after accident, but prior to time action was instituted. *Johnson v. Jacoby* (1952, 90 U. S. App. D. C. 280, 195 F. 2d 563).

One may be resident of District of Columbia although domiciled elsewhere for purposes of the Financial Responsibility Act authorizing substituted service on nonresident motorist. *Id.*

SURETY

Automobile negligence action defendant who, as successful nonresident defendant, was entitled to attorney's fee on plaintiff's undertaking, would have to give surety notice and an opportunity to be heard before he was entitled to have judgment on undertaking run against such surety. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

UNDERTAKING

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined by Code as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

§ 40-417. Citation of chapter.

This chapter may be cited as the "Motor Vehicle Safety Responsibility Act of the District of Columbia." (May 25, 1954, 68 Stat. 120, ch. 222, § 1, effective May 25, 1955.)

EFFECTIVE DATE

The Motor Vehicle Safety Responsibility Act which has been included in the District of Columbia Code as sections 40-417 to 40-498 contained the following provision concerning the act's effective date:

"SEC. 87. EFFECTIVE DATE OF ACT.—This Act shall take effect one year after its enactment."

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Torts committed by officers and employees of the District of Columbia while in the exercise of governmental functions, cannot be made the basis of liability in a suit against District.

Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 199, 225 F. 2d 38).

§ 40-418. Definitions.

The following words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning.

(a) COMMISSIONERS.—The Board of Commissioners of the District of Columbia, or their designated agent or agents.

(b) DRIVER OR OPERATOR.—Every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(c) **LICENSE.**—Any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including—

(1) any temporary or learner's permit;

(2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(3) any nonresident's operating privilege as defined herein.

(d) **MOTOR VEHICLE.**—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from over-head trolley wires, but not operated upon rails.

(e) **NONRESIDENT.**—Every person who is not a resident of the District of Columbia.

(f) **NONRESIDENT'S OPERATING PRIVILEGE.**—The privilege conferred upon a nonresident by the laws of the District of Columbia pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District of Columbia.

(g) **OWNER.**—A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(h) **PERSON.**—Every natural person, firm, copartnership, association, or corporation.

(i) **PUBLIC HIGHWAY.**—Any street, road, or public thoroughfare.

(j) **REGISTRATION.**—The registration plates issued under the laws of the District of Columbia pertaining to the registration of vehicles.

(k) **VEHICLE.**—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (May 25, 1954, 68 Stat. 120, ch. 222, § 2, effective May 25, 1955.)

NOTES TO DECISIONS

"OPERATOR" DEFINED

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within statute prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *G. Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

OWNERS

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names, *Adella C. Burt, Archibald Burt and William W. Mumford v. Henry Cordover and Cella Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

§ 40-419. Administration by Commissioners.

(a) The Commissioners shall administer and enforce the provisions of this chapter, and may make rules and regulations necessary for its administration.

(b) The Commissioners shall receive and consider any pertinent information upon request of persons aggrieved by their orders or acts under any of the provisions of this chapter.

(c) The Commissioners shall prescribe and provide suitable forms requisite or deemed necessary for the purpose of this chapter. (May 25, 1954, 68 Stat. 121, ch. 222, § 3, effective May 25, 1955.)

§ 40-420. Review by Commissioners.

Any order or act of any agent of the Commissioners under the provisions of this chapter shall be subject to review by the Commissioners. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Commissioners within five days after the issuance of the order or occurrence of the Act in question. If upon review the Commissioners shall sustain such order or act, the same shall become effective immediately.

Any person whose license or motor-vehicle registration shall be denied, suspended, or revoked by the Commissioners under the provisions of this chapter may, within thirty days after such denial, revocation, or suspension has been reviewed by the Commissioners and sustained by them, file in the Municipal Court of Appeals for the District of Columbia an application for the allowance of an appeal from the order or decision of the Commissioners. If a majority of the court are of the opinion that the appeal should be allowed, the appeal shall be recorded as granted and the case set down for hearing on appeal. If a majority of the court shall be of the opinion that the appeal should be denied such denial shall stand as an affirmance of the order appealed from. Said court is authorized to prescribe fees and promulgate rules governing the application for the allowance of an appeal and the record and proceedings on appeal, and the said court shall have power to affirm, modify, or reverse the order or decision of the Commissioners, where the appeal is allowed pursuant hereto; and the decision of said court whether in denying an application for allowance of appeal or in deciding an appeal after it has been granted shall be final. The application to said court for the allowance of an appeal shall not operate as a stay of such order of the Commissioners, unless the applicant shall have deposited with the Commissioners, under protest and subject to the decision of the court, security in the amount required by the Commissioners in accordance with the provisions of this chapter, or a bond in an amount equal to the amount of security required by the Commissioners, guaranteeing that the applicant, in the event the order appealed from is sustained or modified by the court, will comply fully therewith. In the event said order of the Commissioners shall be ordered vacated, either by the

court or the Commissioners, the security deposited under protest shall be returned to the depositor or the bond shall be canceled.

For the purposes of this section, the phrase "review by the Commissioners" shall mean a review by the Board of Commissioners of the District of Columbia or a review by any board of review established by the Commissioners of the District of Columbia to review the order or act of any agent of the Commissioners pursuant to the provisions of this chapter. No member of such board of review established by the Commissioners shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3.)

AMENDMENTS

1958—Section 3 of act of August 28, 1958, cited to text, struck the second sentence and added the new matter set out as the second and third sentences of the section.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of the act of August 28, 1958, cited to text, provides as follows: "SEC. 16. Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

NOTES TO DECISIONS

SUSPENSION MANDATORY

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

WAIVER OF DEPOSIT

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-421. Abstract of operating record.

(a) The Commissioners shall upon request furnish any person a certified abstract of the District of Columbia operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor-vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor-vehicle laws as reported to the Commissioners and a record of any vehicles registered in the name of such person. The Commissioners shall collect for each abstract the sum of \$2.

(b) The Commissioners shall upon request furnish any person an uncertified abstract of the District operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation

of the motor vehicle laws, as reported to the Commissioners. The Commissioners shall collect for each such uncertified abstract a sum equal to the cost to the District of furnishing such abstract, as such cost may be determined by the Commissioners from time to time. (May 25, 1954, 68 Stat. 122, ch. 222, § 5, effective May 25, 1955.)

§ 40-422. Information regarding financial responsibility to be furnished person injured.

The Commissioners shall furnish to any person who may be injured in person or property by any motor vehicle, upon written request, a statement that the owner or operator of any motor vehicle has furnished evidence of his ability to respond in damages in accordance with the provisions of this chapter, and if such owner or operator shall have furnished evidence of having had in effect at the time of such injury or damage a motor-vehicle liability policy, the name and address of the insurance carrier writing such policy. The Commissioners shall collect for each abstract the sum of \$2. (May 25, 1954, 68 Stat. 122, ch. 222, § 6, effective May 25, 1955.)

§ 40-423. Service of process on nonresident.

(a) The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the Commissioners or their successors in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the Commissioners or in their office, and such service shall be sufficient service upon the said nonresident: *Provided*, That the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court in defending the action in the District of Columbia, except that nothing contained in this proviso shall be construed to require the United States or the District of Columbia to file the undertaking hereby required: *And provided further*, That notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in

the manner provided by section 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the Commissioners.

(b) For the purposes of this section—

(1) The term "operation" as used in connection with a motor vehicle includes any use as well as any operation of such vehicle.

(2) The term "nonresident" shall include any person who is not a resident of the District of Columbia and who was the owner or operator of a motor vehicle at the time such vehicle was involved in an accident or collision in the District of Columbia, and includes any such person who was a resident of the District of Columbia at the time such motor vehicle was involved in such accident or collision but who subsequently became a nonresident of the District of Columbia and is a nonresident thereof at the time process is sought to be served on him as a result of such accident or collision.

(c) The appointment of the Commissioners or their successors in office to be the true and lawful attorney for such nonresident as provided by this section shall be irrevocable and binding upon the executor, administrator, or other personal representative of such nonresident. Where a nonresident has been served in accordance with this section and he dies thereafter, the court must allow the action to be continued against his executor, administrator, or other personal representative upon motion, and with such notice as the court deems proper. Except as otherwise provided in the two preceding sentences, service of process may be made on the executor, administrator, or other personal representative of a nonresident in the same manner as is provided in this section in the case of a nonresident. (May 25, 1954, 68 Stat. 123, ch. 222, § 7, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 4.)

AMENDMENTS

1958—Section 4 of the act of August 28, 1958, cited to text, amended the section as follows:

- (1) Inserted (a) to precede 1st paragraph.
- (2) Inserted the exception clause to precede the colon at the end of the first proviso.
- (3) Amended the last paragraph to read as above set out.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

NOTES TO DECISIONS

FORUM NON CONVENIENS

Where, on date complaint was filed, plaintiff furnished copies of complaint to be served to initiate the process of effecting service on nonresident defendants, but no undertaking was filed and no return of service appeared in the docket, and subsequently the District Court dismissed the complaint without prejudice, there was final judicial action subject to appellate review, notwithstanding no appearance was entered for the appellees in the appellate court or in the District Court. *E. Caspar*

et al. v. R. Devine et ano. (1958, 103 U.S. App. D.C. 193, 257 F. 2d 197).

Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Id.*

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Ass'n* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-424. Operator deemed to be agent of owner.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. (May 25, 1954, 68 Stat. 123, ch. 222, § 8, effective May 25, 1955.)

NOTES TO DECISIONS

BURDEN OF PROOF

In action against District of Columbia for damages sustained when truck collided with plaintiff's automobile, the presumption under the District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that driver was operating truck with consent of district, arising out of proof of ownership of truck by district, placed on district the burden of proving that truck at time of accident was not operated with district's express or implied consent. *District of Columbia v. D. Abramson et ano.* (D.C. Mun. App. 1959, 148 A. 2d 578).

HUSBAND AND WIFE

District of Columbia rule that a married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident was applicable to preclude actions being brought in District for injuries sustained in New York. *Marjorie A. Baker v. Paul L. Gaffney* (1956, 141 F. Supp. 602).

A married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident. *Id.*

Principle that questions of liability in tort are governed by law of state in which tort is committed is subject to exception where forum does not possess necessary procedural machinery to enforce such law. *Id.*

JURY QUESTION

In action brought by automobile owner to recover for damage sustained when his automobile was struck, while parked, at night, against one whose automobile had been identified as the one doing the damage, defendant's evi-

dence that neither he nor anyone with his consent had driven his automobile at time involved was not so uncontradicted as to justify withdrawal of matter from jury. *J. A. Love et ano. v. W. Gaskins* (D.C. Mun. App. 1959, 153 A. 2d 660).

PRESUMPTION OF CONSENT

In action against District of Columbia for damages sustained when truck, which was owned by district and which was assigned to recreation department and which was operated by department employee, collided with plaintiff's automobile while employee was driving truck out from the curb in front of employee's house where employee had parked truck while he was having his lunch, proof of district's ownership of truck raised a presumption under District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that employee was operating with consent of district, and the evidence, consisting of regulation of district commissioners requiring that government-owned vehicles be used exclusively for official purposes and testimony of employee's superiors in the department that employee did not have permission to use truck to go home for lunch, was sufficient to overcome such presumption. *District of Columbia v. D. Abrahamson et ano.* (D.C. Mun. App. 1959, 148 A. 2d 578).

REBUTTABLE PRESUMPTION

Statutory presumption of consent may be overcome by positive testimony of motor vehicle's owner, and if such presumption is overcome by uncontradicted proof, owner is entitled to directed verdict as a matter of law; but if on the other hand, evidence contains inconsistencies and self-contradictions or is reasonably subject to contradictory interpretations, question is one of fact for jury determination. *Stumpner v. Harrison* (D. C. Mun. App. 1957, 136 A. 2d 870).

In action for personal injuries and property damage sustained when truck owned by defendant and driven by one of his employees struck rear of plaintiff's vehicle, evidence on consent issue was sufficient to overcome statutory presumption and entitled defendant to directed verdict as a matter of law. *Id.*

§ 40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.

(a) There is hereby created in the Treasury of the United States a special fund which shall be known as the Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., to which shall be deposited any funds paid to the Commissioners as security or proof in accordance with the provisions of this chapter.

(b) Said Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., is available to the Commissioners for disbursements required under the provisions of this chapter, such disbursements to be made in the same manner as other disbursements for the District of Columbia are made. (May 25, 1954, 68 Stat. 123, ch. 222, § 9, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors

authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-426. Report of accident required.

The driver of a vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in damage to the property of any one person in excess of \$100 or in bodily injury to or in the death of any person shall within five days after such accident report the accident on a form approved by the Commissioners to the office of the Commissioners subject to the following exceptions in this article. (May 25, 1954, 68 Stat. 124, ch. 222, § 10, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

SUSPENSION MANDATORY

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

WAIVER OF DEPOSIT

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-427. Form of accident report.

The form of accident report prescribed by the Commissioners shall contain information sufficient to enable the Commissioners to determine whether the requirements for the deposit of security under this chapter are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. (May 25, 1954, 68 Stat. 124, ch. 222, § 11, effective May 25, 1955.)

§ 40-428. Incapacity of person to make an accident report.

(a) An accident report is not required under this article from any person who is physically incapable of making report during the period of such incapacity.

(b) If any driver be physically incapable of making a required accident report or refuses or neglects to make such report, and is not the owner of the

vehicle involved in such accident, then the owner of such vehicle shall within five days after he learns of the accident make such report not made by the driver. (May 25, 1954, 68 Stat. 124, ch. 222, § 12, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 5.)

AMENDMENTS

1958—Section 5 of the act of August 28, 1958, cited to text, amended subsection (b) by inserting the phrase "or refuses or neglects to make such report."

AUTHORITY OF COMMISSIONERS NOT AFFECTED— DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-429. Additional information concerning accident to be furnished on request.

The driver or the owner of the vehicle involved in the accident shall furnish such additional relevant information as the Commissioners may require (May 25, 1954, 68 Stat. 124, ch. 222, § 13, effective May 25, 1955.)

§ 40-430. Suspension of license for failure to report.

The Commissioners are authorized, in their discretion, to suspend the license of any person who fails to report as required by the Commissioners until such report has been filed and for such further period, not to exceed thirty days, as the Commissioners may determine. (May 25, 1954, 68 Stat. 124, ch. 222, § 14, effective May 25, 1955.)

§ 40-431. Accident reports to be confidential.

Accident reports and supplemental information in connection therewith required under sections 40-426 to 40-431 may be examined by any person named in such report or his representative designated in writing, but shall not be open to public inspection, nor shall copying of lists of such reports be permitted. (May 25, 1954, 68 Stat. 124, ch. 222, § 15, effective May 25, 1955.)

§ 40-432. Application of chapter—Amount.

The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in bodily injury to or death of any person or damage to the property of any one person in excess of \$100. (May 25, 1954, 68 Stat. 124, ch. 222, § 16, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors

authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-433. Determination of the amount of security.

(a) The Commissioners, not less than twenty days after receipt of a report of an accident as described in the preceding article, shall determine the amount of security which shall be sufficient in their judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(b) The Commissioners shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within fifty days after the accident and the Commissioners do not have sufficient information on which to base an evaluation of such injuries or damage, then the Commissioners after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person.

(c) The Commissioners within fifty days after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided upon the expiration of ten days after the sending of such notice unless within said time security be deposited as required by said notice. (May 25, 1954, 68 Stat. 125, ch. 222, § 17, effective May 25, 1955.)

NOTES TO DECISIONS

SUSPENSION MANDATORY

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

WAIVER OF DEPOSIT

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-434. Exceptions to requirements as to security and suspension.

The requirements as to security and suspension in this article shall not apply—

(1) to the driver or owner if the owner had in effect at the time of the accident an automobile

liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this paragraph if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) to a driver or owner whose liability for damages resulting from the accident is, in the judgment of the Commissioners, covered by any other form of liability insurance policy or bond;

(4) to any person qualifying as a self-insurer under section 40-494 or part II of the Interstate Commerce Act (Chapter 8, Title 49 U. S. Code) to any person operating a vehicle for such self-insurer;

(5) to the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(6) to the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(7) to the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission;

(8) to the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia, or to the driver of such vehicle if operating such vehicle with permission; or

(9) to the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. (May 25, 1954, 68 Stat. 125, ch. 222, § 18, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 6.)

AMENDMENTS

1958—Section 6 of the act of August 28, 1958, cited to text, amended paragraph (4) of the section by adding the phrase "or Part II of the Interstate Commerce Act".

AUTHORITY OF COMMISSIONERS NOT AFFECTED— DELEGATION OF AUTHORITY

See note to section 40-420.

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was con-

sidered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-435. Automobile liability policy or bond—Requirements.

(a) No policy or bond shall be effective under section 40-434 unless issued by an insurance company or surety company authorized to do business in the District of Columbia, except as provided in subdivision (b) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than \$20,000 because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than \$5,000 because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under section 40-434 with respect to any vehicle which was not registered in the District of Columbia or a vehicle which was registered elsewhere than in the District of Columbia at the effective date of the policy or bond or the most recent renewal thereof unless the insurance company or surety company issuing such policy or bond is authorized to do business in the District of Columbia, or if said company is not authorized to do business in the District of Columbia, unless it shall execute a power of attorney authorizing the Commissioners to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(c) The Commissioners may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the Commissioners have reason to believe that the information is erroneous. (May 25, 1954, 68 Stat. 126, ch. 222, § 19, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-436. Security—Form and amount.

(a) The security required under sections 432 to 449 shall be in such form and in such amount as the Commissioners may require, but in no case in excess

of the limits specified in section 40-435 in reference to the acceptable limits of a policy or bond.

(b) Every depositor of security shall designate in writing every person in whose name such deposit is made, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. (May 25, 1954, 68 Stat. 126, ch. 222, § 20, effective May 25, 1955.)

§ 40-437. Failure to deposit security—Suspensions.

In the event that any person required to deposit security under this article fails to deposit such security within ten days after the Commissioners have sent the notice as hereinbefore provided, the Commissioners shall thereupon suspend—

(1) the license of each driver in any manner involved in the accident;

(2) the registration of all vehicles owned by the owner of each vehicle of a type subject to registration under the laws of the District of Columbia involved in such accident;

(3) if the driver is a nonresident, the privilege of operating, within the District of Columbia, a vehicle of a type subject to registration under the laws of the District of Columbia; and

(4) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within the District of Columbia of a vehicle of a type subject to registration under the laws of the District of Columbia.

Such suspensions shall be made in respect to persons not otherwise exempt under this chapter who are required by the Commissioners to deposit security and who fail to deposit such security, except as otherwise provided under this chapter. (May 25, 1954, 60 Stat. 126, ch. 222, § 21, effective May 25, 1955.)

NOTES TO DECISIONS

SUSPENSION MANDATORY

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

WAIVER OF DEPOSIT

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-438. Release from liability.

(a) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(b) A covenant not to sue shall relieve the parties thereto as to each other from the security requirements of sections 40-432 to 40-449.

(c) In the event the Commissioners have evaluated the injuries or damage to any minor in an

amount not more than \$200 the Commissioners may accept, for the purpose of sections 40-432 to 40-449 only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court.

(d) In any accident involving property of the United States or the District of Columbia, should it appear upon investigation by or on behalf of the United States or the District that a person involved in such accident may not be liable to the United States or the District for any damage resulting therefrom, such person may submit, and the appropriate United States official and the Commissioners are hereby authorized to give to him, a statement to such effect, and such statement may be in lieu of the release required by this section: *Provided*, That the United States and the Commissioners may withdraw such statement at any time if it should appear that the person to whom it was given may be liable to the United States or the District for damages arising out of such accident, and if such statement be withdrawn, the person to whom it was given shall be required to comply with the provisions of this chapter. (May 25, 1954, 68 Stat. 127, ch. 222, § 22, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 7.)

AMENDMENTS

1958—Section 7 of the act of August 28, 1958, cited to text, amended the section by adding subparagraph (d) thereto.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-439. Adjudication of nonliability—Release from requirement of the deposit of security.

A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. (May 25, 1954, 68 Stat. 127, ch. 222, § 23, effective May 25, 1955.)

§ 40-440. Agreements for payment of damages.

(a) Any two or more of the persons involved in or affected by an accident as described in section 40-432 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the Commissioners.

(b) The Commissioners, to the extent provided by any such written agreement filed with them, shall not require the deposit of security and shall terminate any prior order of suspension, or if security has previously been deposited, the Commissioners shall return such security to the depositor or his personal representative, or pay such security to the depositor's assignee, as the case may be, when all payments required by such agreement have been made in full, when an amount equal to such security has been paid in accordance with such agreement, or when such security is assigned to the person injured or damaged as a result of said accident.

(c) In the event of a default in any payment under such agreement and upon notice of such default the Commissioners shall take action suspending the license or registration of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(d) Such suspension shall remain in effect and such license or registration shall not be restored unless and until the person in default has paid all payments then in default.

(e) The Commissioners may accept evidence of a payment to the driver or owner of a vehicle involved in any accident by any other person involved in such accident or by the insurance carrier of any other person involved in such accident on account of damage to property or bodily injury as a settlement agreement relieving such driver or owner from the security and suspension provisions of this article in respect to any possible claim by the person on whose behalf such payment has been made might have for property damage or bodily injury arising out of the accident. A payment to the insurance carrier of a driver or owner under the carrier's right of subrogation for the purposes of this article shall be considered the equivalent of a payment to such driver or owner. (May 25, 1954, 68 Stat. 127, ch. 222, § 24, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-892, § 8.)

AMENDMENTS

1958—Section 8 of the act of August 28, 1958, cited to text, amended the section by adding subsection (e) thereto.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See onte to section 40-420.

§ 40-441. Payment upon judgment—Release of judgment debtor.

The payment of a judgment arising out of an accident or the payment upon such judgment of an amount equal to the maximum amount which could be required for deposit under this article shall, for the purposes of this article, release the judgment debtor from the liability evidenced by such judgment. (May 25, 1954, 68 Stat. 127, ch. 222, § 25, effective May 25, 1955.)

§ 40-442. Termination of security requirement.

The Commissioners, if satisfied as to the existence of any fact which under sections 40-438, 40-439, 40-440, and 40-441 would entitle a person to be relieved from the security requirements of sections 40-432 to 40-449, shall not require the deposit of security by the person so relieved from such requirement and shall terminate any prior order of suspension in respect to such person, or if security has previously been deposited by such person, the Commissioners shall immediately return such deposit to such person or to his personal representative. (May 25, 1954, 68 Stat. 127, § 26, effective May 25, 1955.)

§ 40-443. Duration of suspension.

Unless a suspension is terminated under other provisions of sections 40-432 to 40-449, any order

of suspension by the Commissioners under this article shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended and no registration shall be renewed for or issued to any person whose vehicle registration is so suspended until—

(1) such person shall deposit or there shall be deposited on his behalf the security required under this article; or

(2) one year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioners has been filed with them that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law or damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The Commissioners may take whatever steps are necessary to verify the statement set forth in any said affidavit. (May 25, 1954, 68 Stat. 128, ch. 222, § 27, effective May 25, 1955.)

§ 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

(a) In case the driver or the owner of a vehicle of a type subject to registration under the laws of the District of Columbia involved in an accident within the District of Columbia has no license or registration in the District of Columbia, then such driver shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of this article to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in the District of Columbia.

(b) When a nonresident's operating privilege is suspended pursuant to section 40-437, the Commissioners shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the State in which such nonresident resides.

(c) Upon receipt of certification that the operating privilege of a resident of the District of Columbia has been suspended or revoked in any State pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioners to suspend a nonresident's operating privilege had the accident occurred in the District of Columbia, the Commissioners shall suspend the license of such resident if he was the driver, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such State relating to the deposit of such security.

The provisions of this subsection shall be applicable only to a certification from a State which by its laws has made provision for the suspension or revocation of the license and all registrations of a

resident of such State for failure to deposit security for the payment of any judgment arising out of a motor vehicle accident in the District of Columbia, or for failure to make payment of an agreed amount with respect to all claims arising from such accident, in accordance with the provisions of this chapter. (May 25, 1954, 68 Stat. 128, ch. 222, § 28, effective May 25, 1955.)

§ 40-445. Commissioners authorized to decrease amount of security.

The Commissioners may reduce the amount of security ordered in any case within six months after the date of the accident if in their judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. (May 25, 1954, 68 Stat. 129, ch. 222, § 29, effective May 25, 1955.)

§ 40-446. Correction of Commissioners' action within one year.

Whenever the Commissioners have taken any action or have failed to take any action under sections 40-432 to 40-449 by reason of having received erroneous information or by reason of having received no information, then upon receiving correct information within one year after the date of an accident the Commissioners shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing shall not, however, be deemed to require the Commissioners to reevaluate the amount of any deposit required under sections 40-432 to 40-449. (May 25, 1954, 68 Stat. 129, ch. 222, § 30, effective May 25, 1955.)

§ 40-447. Disposition of security.

(a) Such security shall be applicable and available only—

(1) for the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit; or

(2) for the payment of a judgment or judgments, rendered against the person required to make the deposit for damages arising out of the accident in an action at law begun not later than one year after the deposit of such security.

(b) Every distribution of funds from the security deposits shall be subject to the limits of the Commissioners' evaluation on behalf of a claimant. (May 25, 1954, 68 Stat. 129, ch. 222, § 31, effective May 25, 1955.)

§ 40-448. Return of deposit.

Upon the expiration of one year from the date of any deposit of security any security remaining or deposit shall be returned to the person who made such deposit or to his personal representative if an affidavit or other evidence satisfactory to the Commissioners has been filed with them stating—

(1) that no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) that there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of sections 40-432 to 40-449 authorizing such return. (May 25, 1954, 68 Stat. 129, ch. 222, § 32, effective May 25, 1955.)

§ 40-449. Matters not to be evidence in civil suits.

The report required following an accident, the action taken by the Commissioners pursuant to sections 40-432 to 40-449, the findings, if any, of the Commissioners upon which such action is based, and the security filed as provided in sections 40-432 to 40-449, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (May 25, 1954, 68 Stat. 129, ch. 222, § 33, effective May 25, 1955.)

§ 40-450. Persons required to deposit proof of future responsibility.

The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of the District of Columbia. (May 25, 1954, 68 Stat. 129, ch. 222, § 34, effective May 25, 1955.)

§ 40-451. Proof of financial responsibility for the future.

The term "proof of financial responsibility for the future" as used in this chapter shall mean: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of the District of Columbia in the amount of \$10,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$20,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the term "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future". (May 25, 1954, 68 Stat. 129, ch. 222, § 35, effective May 25, 1955.)

§ 40-452. "Judgment" and "State" defined.

The following words and phrases when used in sections 40-450 to 40-484 shall, for the purpose of sections 40-450 to 40-484, have the meanings respectively ascribed to them in this section.

(a) The term "judgment" shall mean: Any judgment which shall have become final by expiration

without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any State, the District of Columbia, or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any vehicle of a type subject to registration under the laws of the District of Columbia, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(b) The term "State" shall mean: Any State, Territory, or possession of the United States, or any province of the Dominion of Canada. (May 25, 1954, 68 Stat. 130, ch. 222, § 36, effective May 25, 1955.)

§ 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law:

- (1) Operating a motor vehicle under the influence of any intoxicating liquor or narcotic drug;
- (2) Any homicide committed by means of a motor vehicle;
- (3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle;
- (4) Reckless driving involving personal injury;
- (5) Any felony in the commission of which a motor vehicle is used; or
- (6) A conviction of, or forfeiture of bail or collateral for an offense in any State which, if committed in the District of Columbia, would be one of the offenses listed in paragraphs (1) through (5) of this subsection (a);

shall be suspended by the Commissioners and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Commissioners shall not suspend such registration unless otherwise required or permitted by law, or (2) if a conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a State, or a political subdivision of a State or a municipality thereof, the Commissioners shall not suspend the

registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of this article to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.

(b) Upon receipt of a certification from any State that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Commissioners to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Commissioners shall suspend the license of such resident and the registration of all vehicles registered in his name. (May 25, 1954, 68 Stat. 130, ch. 222, § 37, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9.)

AMENDMENTS

1958—Section 9 of the act of August 28, 1958, cited to text, amended the section to read as above set out.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-454. Duration of suspension—giving and maintenance of proof of financial responsibility.

The suspension or revocation hereinbefore required shall remain in effect and the Commissioners shall not issue to such person any new or renewal of license or register or reregister in the name of such person as owner of any such vehicle until permitted under the motor vehicle laws of the District of Columbia and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 38, effective May 25, 1955.)

§ 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioners.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for:

- (1) Driving a motor vehicle upon the highways without being licensed to do so under the laws of the District of Columbia when so required; or
 - (2) Driving a vehicle not registered under the laws of the District of Columbia when so required;
- the operating privilege of such person shall be suspended and no license shall thereafter be issued to

such person, but if such person has obtained a license prior to the time the Commissioners have issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Commissioners a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein. (May 25, 1954, 68 Stat. 131, ch. 222, § 39, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85-792, § 10.)

AMENDMENTS

1958—Section 10 of the act of August 28, 1958, cited to text, amended the section to read as above set out.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-456. Suspension of nonresidents' operating privilege—Duration.

Whenever the Commissioners suspend or revoke a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 40, effective May 25, 1955.)

§ 40-457. Report by courts of nonpayment of judgments.

Whenever any person fails within thirty days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court in which any such judgment is rendered within the District of Columbia to forward to the Commissioners immediately upon such request a certificate of facts relative to such judgment, upon a form provided by the Commissioners, which said certificate shall be prima facie evidence of the facts therein stated. (May 25, 1954, 68 Stat. 131, ch. 222, § 41, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 11.)

AMENDMENTS

1958—Section 11 of the act of August 28, 1958, cited to text, struck out the phrase "a certified copy of such judgment" and inserted in lieu thereof the phrase beginning with "a certificate of facts" and ending with "Commissioners" and also struck out the words "certified copy" and substituted in place thereof the word "certificate".

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's state.

If the defendant named in any certified copy of a judgment reported to the Commissioners is a nonresident, the Commissioners shall transmit a certified copy of the judgment to the official in charge

of the issuance of licenses and registrations of the State of which the defendant is a resident. (May 25, 1954, 68 Stat. 131, ch. 222, § 42, effective May 25, 1955.)

§ 40-459. Suspension for nonpayment of judgment.

The Commissioners upon receipt of a certified copy of a judgment or a certificate of facts relative to such judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this chapter. (May 25, 1954, 68 Stat. 131, ch. 222, § 43, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 12.)

AMENDMENTS

1958—Section 12 of the act of August 28, 1958, cited to text, struck the word "and" where it first appeared and substituted the word "or" and also struck out the phrase "on a form provided by the Commissioners".

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 40-420.

§ 40-460. Government vehicles—Exception as to nonpayment of judgment provisions.

The provisions of section 40-459 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation with permission, of a vehicle owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia or any political subdivision of the District of Columbia. (May 25, 1954, 68 Stat. 131, ch. 222, § 44, effective May 25, 1955.)

§ 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

If the judgment creditor consents in writing, in such form as the Commissioners may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Commissioners, in their discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 40-466, provided the judgment debtor furnishes proof of financial responsibility. (May 25, 1954, 68 Stat. 131, ch. 222, § 45, effective May 25, 1955.)

§ 40-462. Commissioners finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

No license, registration, or nonresident's operating privilege of any person shall be suspended under the provisions of sections 40-450 to 40-484 if the Commissioners shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the Commissioners that an insurer is obligated to pay a judgment shall not be binding upon such insurer

and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the Commissioners, notwithstanding any contrary finding theretofore made by them shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, as provided in section 40-459. (May 25, 1954, 68 Stat. 132, ch. 222, § 46, effective May 25, 1955.)

§ 40-463. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 40-460, 40-461, and 40-466. (May 25, 1954, 68 Stat. 132, ch. 222, § 47, effective May 25, 1955.)

§ 40-464. Discharge in bankruptcy.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter. (May 25, 1954, 68 Stat. 132, ch. 222, § 48, effective May 25, 1955.)

§ 40-465. Required payments—Amounts—Settlements.

(a) Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied—

(1) when \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) when, subject to such limit of \$10,000 because of bodily injury to or death of one person, the sum of \$20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) when \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. (May 25, 1954, 68 Stat. 132, ch. 222, § 49, effective May 25, 1955.)

§ 40-466. Installment payment of judgments—Default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other

legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioners shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. (May 25, 1954, 68 Stat. 132, ch. 222, § 50, effective May 25, 1955.)

§ 40-467. Breach of agreement to pay in installments.

In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioners shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. (May 25, 1954, 68 Stat. 133, ch. 222, § 51, effective May 25, 1955.)

§ 40-468. Proof required for each registered vehicle.

No vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility for the future unless such proof shall be furnished for such vehicle. (May 25, 1954, 68 Stat. 133, ch. 133, § 52, effective May 25, 1955.)

§ 40-469. Alternate methods of giving proof.

Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing—

(1) a certificate of insurance as provided in section 40-470 or section 40-471; or

(2) a bond as provided in section 40-476; or

(3) a certificate of deposit of money or securities as provided in section 40-479; or

(4) a certificate of self-insurance, as provided in section 40-494; supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (May 25, 1954, 68 Stat. 133, ch. 222, § 53, effective May 25, 1955.)

§ 40-470. Certificate of insurance as proof.

Proof of financial responsibility for the future may be furnished by filing with the Commissioners the written certificate of any insurance carrier duly authorized to do business in the District of Columbia certifying that there is in effect a motor-vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor-vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate

reference all vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. (May 25, 1954, 68 Stat. 133, ch. 222, § 54, effective May 25, 1955.)

§ 40-471. Certificate filed by nonresident as proof of financial responsibility.

A nonresident may give proof of financial responsibility by filing with the Commissioners a written certificate or certificates of an insurance carrier authorized to transact business in the State in which the vehicle, or vehicles, owned by such nonresident is registered, or in the State in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the Commissioners shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the Commissioners to accept service on its behalf of notice or process in any action arising out of a motor-vehicle accident in the District of Columbia;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the District of Columbia relating to the terms of motor-vehicle liability policies issued therein. (May 25, 1954, 68 Stat. 133, ch. 222, § 55, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-472. Default by nonresident insurance carrier.

If any insurance carrier not authorized to transact business in the District of Columbia, which has qualified to furnish proof of financial responsibility defaults in any said undertakings or agreements, the Commissioners shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. (May 25, 1954, 68 Stat. 134, ch. 222, § 56, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically

providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-473. "Motor-vehicle liability policy" defined.

(a) **CERTIFICATION.**—A "motor-vehicle liability policy" as said term is used in this chapter shall mean an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in section 40-470 or section 40-471 as proof of financial responsibility for the future, and issued, except as otherwise provided in section 40-471, by an insurance carrier duly authorized to transact business in the District of Columbia to or for the benefit of the person named therein as insured.

(b) **OWNER'S POLICY.**—Such owner's policy of liability insurance—

1. shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, as follows: \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, \$20,000 because of bodily injury to or death of two or more persons in any one accident, and \$5,000 because of injury to or destruction of property of others in any one accident.

(c) **OPERATOR'S POLICY.**—Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) **REQUIRED STATEMENTS IN POLICIES.**—Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) **POLICY NEED NOT INSURE WORKMEN'S COMPENSATION, ETC.**—Such motor-vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than

domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(f) **PROVISIONS INCORPORATED IN POLICY.**—Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. The liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor-vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

3. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section.

4. The policy, the written application therefor, if any and any rider or endorsement which does not conflict with the provisions of this act shall constitute the entire contract between the parties.

(g) **EXCESS OR ADDITIONAL COVERAGE.**—Any policy which grants the coverage required for a motor-vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor-vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor-vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) **REIMBURSEMENT PROVISION PERMITTED.**—Any motor-vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) **PRORATION OF INSURANCE PERMITTED.**—Any motor-vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) **MULTIPLE POLICIES.**—The requirements for a motor-vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) **BINDERS.**—Any binder issued pending the issuance of a motor-vehicle liability policy shall be deemed to fulfill the requirements for such a policy. (May 25, 1954, 68 Stat. 134, ch. 222, § 57, effective May 25, 1955.)

§ 40-474. Notice of cancellation or termination of certified policy.

The Commissioners shall be notified of the cancellation or expiration of any motor-vehicle liability policy of insurance certified under the provisions of this article or of any surety or real estate bond at least ten days before the effective date of such cancellation or expiration. In the absence of such notice of cancellation or expiration said policy of insurance shall remain in full force and effect that any policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any vehicle designated in both certificates. Upon receipt of such notice of cancellation or expiration the said Commissioners shall require other evidence of ability to respond in damages and upon failure to furnish the same before the effective date of such cancellation or expiration, the license and all of the registration certificates of the person failing to comply herewith shall be suspended by the Commissioners and shall remain so suspended until such other evidence of ability to respond in damages shall have been given. (May 25, 1954, 68 Stat. 135, ch. 222, § 58, effective May 25, 1955.)

§ 40-475. Provisions of chapter not to affect other policies.

(a) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of the District of Columbia, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. (May 25, 1954, 68 Stat. 136, ch. 222, § 59, effective May 25, 1955.)

§ 40-476. Surety bond as proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within the District of Columbia, or a bond with at least two individual sureties each owning unencumbered real estate within the District of Columbia, and together having equities equal in value to at least twice the amount of the bond which real estate shall be scheduled in the bond approved by a judge of a court of record, which said bond shall be conditioned for payment of the amounts specified in section 40-451. Such bond shall be filed with the Commissioners and shall not be cancelable except after ten days' written notice to the Commissioners. (May 25, 1954, 68 Stat. 136, ch. 222, § 60, effective May 25, 1955.)

§ 40-477. Bond a lien against scheduled real estate—Recording—Notice.

Such bond shall constitute a lien in favor of the District of Columbia upon the real estate so

scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of service because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such bond was filed. Said bond shall be recorded by the principal named therein among the land records of the District of Columbia before the same is filed with the Commissioners. Recordation shall constitute notice as provided by statutes governing the recordation of liens on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 61, effective May 25, 1955.)

§ 40-478. Action on bond.

If such a judgment, rendered against the principal on such bond, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense bring an action or actions in the name of the District of Columbia against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond, which foreclosure action shall be brought in like manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 62, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-479. Deposit of money with Commissioners—Certificate—Evidence of no unsatisfied judgments.

(a) Proof of financial responsibility may be evidenced by the certificate of the Commissioners that the person named therein has deposited with them the sum of \$25,000 in cash. The Commissioners shall not accept any such deposit and issue a certificate therefor unless such deposit is accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the locality where the depositor resides.

(b) The Commissioners may accept as a substitute for a deposit of money required herein other security under such conditions as they may establish. (May 25, 1954, 68 Stat. 136, ch. 222, § 63, effective May 25, 1955.)

§ 40-480. Application of money deposit—Limits.

Such deposit shall be used to satisfy in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such deposit was made. Money so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. (May 25, 1954, 68 Stat. 137, ch. 222, § 64, effective May 25, 1955.)

§ 40-481. Owner of a motor vehicle may give proof for others.

The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The Commissioners shall endorse appropriate restrictions on the face of the license held by such person, or may issue a new license containing such restrictions. (May 25, 1954, 68 Stat. 137, ch. 222, § 65, effective May 25, 1955.)

§ 40-482. Substitution of proof.

The Commissioners shall consent to the cancellation of any bond or certificate of insurance or return any money to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. (May 25, 1954, 68 Stat. 137, ch. 222, § 66, effective May 25, 1955.)

§ 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the Commissioners shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. (May 25, 1954, 68 Stat. 137, ch. 222, § 67, effective May 25, 1955.)

§ 40-484. Duration of proof—Cancellation or return of proof.

(a) The Commissioners shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Commissioners shall return to the person entitled thereto any money deposited pursuant to this chapter as proof of financial responsibility, or the Commissioners shall waive the requirement of filing proof, in any of the following events:

(1) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the Commissioners have not received record of a conviction or

a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom such proof was furnished; or

(2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license and registration to the Commissioners.

(b) The Commissioners shall not consent to the cancellation of any bond or the return of any money in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money has within one year immediately preceding such request been involved as a driver or owner in any motor-vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioners.

(c) Whenever any person whose proof has been canceled or returned under subsection (a) (3) of this section applies for a license or registration within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period. (May 25, 1954, 68 Stat. 137, ch. 222, § 68, effective May 25, 1955.)

§ 40-485. Transfer of registration to defeat purpose of chapter.

(a) If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the vehicle in respect to which such registration was issued registered in any other name until the Commissioners are satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel mortgagee or lessor of such a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

(c) The Commissioners shall suspend the registration of any vehicle transferred in violation of the provisions of this section. (May 25, 1954, 68 Stat. 138, ch. 222, § 69, effective May 25, 1955.)

§ 40-486. Surrender of license and registration.

Any person whose license or registration shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return his license and registration to the Commissioners. If

any person shall fail to return to the Commissioners the license or registration as provided herein, the Commissioners shall forthwith direct any police officer to secure possession thereof and to return the same to the Commissioners. (May 25, 1954, 68 Stat. 138, ch. 222, § 70, effective May 25, 1955.)

§ 40-487. Failure to report accident—Penalty.

Failure to report a motor-vehicle accident or to furnish additional information as required under section 40-426, 40-428, or 40-429 shall be punished by a fine not in excess of \$100. (May 25, 1954, 68 Stat. 138, ch. 222, § 71, effective May 25, 1955.)

§ 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.

(a) Any person who gives information required in such report or otherwise required for such purpose knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence or proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

(b) No person shall swear falsely to any affidavit required by the Commissioners under the authority of this chapter. (May 25, 1954, 68 Stat. 138, ch. 222, § 72, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 13.)

AMENDMENTS

Section 13 of the act of August 28, 1958, cited to text, amended the section by designating the first paragraph as (a) and adding subparagraph (b) thereto.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note section 40-420.

§ 40-489. Operating motor vehicle when license suspended or revoked.

Any person whose license has been suspended or revoked under this chapter and who, during such suspension or revocation, drives any motor vehicle upon any highway, except as permitted under this chapter, shall be fined not more than \$500 or imprisoned not exceeding six months, or both. (May 25, 1954, 68 Stat. 138, ch. 222, § 73, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 14.)

AMENDMENTS

1958—Section 14 of the act of August 28, 1958, struck reference to "registration" and also struck out the phrase beginning with "or knowingly permits" and ending "upon any highway".

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note section 40-420.

§ 40-490. Failure to return license or registration—Penalty.

Any person willfully failing to return license or registration as required in section 40-486 shall be fined not more than \$500 or imprisoned not to exceed thirty days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 74, effective May 25, 1955.)

§ 40-491. Penalty for violations of Motor Vehicle Safety Responsibility Act.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than ninety days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 75, effective May 25, 1955.)

§ 40-492. Jurisdiction of the Municipal Court for the District of Columbia as to prosecutions for violations of provisions of chapter.

All prosecutions for violations of this chapter shall be in the Municipal Court for the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. (May 25, 1954, 68 Stat. 139, ch. 222, § 76, effective May 25, 1955.)

§ 40-493. Vehicles insured under other laws—Exception.

Except for sections 40-423, 40-424, 40-426 to 40-431, this chapter shall not apply to any vehicle the owner of which has complied with the requirements of existing laws of the District of Columbia requiring insurance or other security on motor vehicles. (May 25, 1954, 68 Stat. 139, ch. 222, § 78, effective May 25, 1955; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 15.)

AMENDMENTS

1958—Section 15 of the act of August 28, 1958, cited to text, amended the section to read as above set out.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note section 40-420.

§ 40-494. Self-insurers.

(a) Any person in whose name more than twenty-five vehicles are registered in the District of Columbia may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioners as provided in subsection (b) of this section.

(b) The Commissioners may, in their discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioners may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (May 25, 1954, 68 Stat. 139, ch. 222, § 79, effective May 25, 1955.)

§ 40-495. Appropriations authorized.

There is hereby authorized to be appropriated out of the general fund of the District of Columbia such sums as may be necessary to carry out the

provisions of this chapter. (May 25, 1954, 68 Stat. 139, ch. 222, § 80, effective May 25, 1955.)

§ 40-496. Retroactive application of the Motor Vehicle Safety Responsibility Act of the District of Columbia.

This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor-vehicle laws of the District of Columbia, occurring prior to May 25, 1955. (May 25, 1954, 68 Stat. 140, ch. 222, § 83, effective May 25, 1955.)

NOTES TO DECISIONS

POWER OF ATTORNEY CONSTRUED

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-497. Provisions of chapter not to prevent other processes provided by law.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (May 25, 1954, 68 Stat. 140, ch. 222, § 84, effective May 25, 1955.)

§ 40-498. Interpretation of provisions of the chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make it uniform with similar laws enacted by the several States. (May 25, 1954, 68 Stat. 140, ch. 222, § 85, effective May 25, 1955.)

§ 40-498a. Effect of Reorganization Plan Number 5 of 1952.

Where any provision of sections 40-417 to 40-498c, or any amendment made by sections 40-417 to 40-498c, refers to an office or agency abolished by Reorganization Plan Number 5 of 1952, such reference shall be deemed to be the office, agency, or officer exercising the functions of the office or agency so abolished. (May 25, 1954, 68 Stat. 139, ch. 222, § 81, effective May 25, 1955.)

CROSS REFERENCE

Reorganization Plan No. 5 of 1952 is set out in the appendix to Title I.

§ 40-498b. Constitutionality—Partial Invalidity.

If any part or parts of sections 40-417 to 40-498c shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of sections 40-417 to 40-498c. (May 25, 1954, 68 Stat. 140, ch. 222, § 86, effective May 25, 1955.)

§ 40-498c. Effect of prior law—Repeal.

Sections 40-417 to 40-498c shall in no respect be considered as a repeal of the Traffic Acts of the Dis-

trict of Columbia, except as specifically provided herein, but shall be construed as supplemental thereto.

The Owners' Financial Responsibility Act of the District of Columbia, is hereby repealed except with respect to any accident or judgment arising therefrom, or violation of the motor vehicle laws of the District of Columbia, occurring prior to the effective date of sections 40-417 to 40-498c. (May 25, 1954, 68 Stat. 139, ch. 222, § 82, effective May 25, 1955.)

PRIOR LAW

The Owners' Financial Responsibility Act of the District of Columbia, the act of May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-17, was previously set out as sections 40-401 to 40-416 of this chapter.

Chapter 6.—REGULATION OF TRAFFIC

Sec.

40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to tested person—Blood test—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

§ 40-603 [6:243]. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

* * * *

(c) The Commissioners of the District of Columbia are authorized and empowered to make, modify, and enforce reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided*, That congressional tags shall be issued by the commissioners under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the Chief Clerk of the Senate, the Parliamentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further*, That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such

congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than \$300 or imprisoned not more than ninety days, or both.

* * * *

(As amended, Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3.)

AMENDMENTS

1957—Section 3 of the act of September 2, 1957, cited to text, amended subsection (c) by inserting into the first proviso clause the words, "The Chief Clerk of the Senate, the Parliamentarian of Senate," extending congressional tag privileges to said officials.

TRANSFER OF FUNCTIONS

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953 and made effective August 15, 1953, established under the direction and control of the Engineer Commissioner, a Department of Vehicles and Traffic, headed by a Director. The new department is to provide for the planning of traffic and parking facilities and the administration of the Motor Vehicle laws of the District. A Commissioners' Traffic Advisory Board was established, and the members of the former board reappointed. The previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency were abolished by the order. The organization of the new department, as contained in the order, set up a Motor Vehicle Division which includes the Registrar of Titles and Tags. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

AUTHORITY TO REVOKE

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *C. Tillman v. Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1958, 144 A. 2d 922).

RESIDENCE

A long-continued physical presence, without more, does not constitute "residence" within meaning of statutory provision exempting from excise tax levied for issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia those motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District and establishing or maintaining "residences" in the District. *District of Columbia v. Fleming* (1954, 95 U. S. App. D. C. 4, 217 F. 2d 18).

Where government employee, who lived at mother's home in District of Columbia, purchased automobile in District and drove it immediately to Connecticut where he had maintained a home for seven years, and left automobile in Connecticut for use of his wife and their two daughters, and he spent every other week end in Connecticut with his family, and it was not until a year later that his wife joined him in District, he was not subject to excise tax in District under statute levying an excise tax for issuance of every original certificate of title for a motor vehicle in District but exempting from tax motor vehicles purchased or acquired by nonresidents prior to coming into District and "establishing" or maintaining "residences" in District. *Id.*

§ 40-603a. Office of Registrar of Titles and Tags.

(j) (5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Commissioners or their designated agent are authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle. (As amended July 24, 1956, 70 Stat. 633, ch. 695, § 1.)

AMENDMENTS

1956—Section 1 of the act of July 24, 1956, cited to text, amended subsection (j) by adding paragraph (5) thereto.

EFFECTIVE DATE OF AMENDMENT

1956—Section 3 of the act of July 24, 1956, cited to text, provided that the act shall take effect thirty days after its approval.

TRANSFER OF FUNCTIONS

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953 and made effective August 15, 1953, established under the direction and control of the Engineer Commissioner, a Department of Vehicles and Traffic, headed by a Director. The new department is to provide for the planning of traffic and parking facilities and the administration of the Motor Vehicle laws of the District. The previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Driver Improvement Section, and the Motor Vehicle Parking Agency were abolished by the order. The organization of the new department, as contained in the order, set up a Motor Vehicle Division which includes the Registrar of Titles and Tags. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 40-604 [6:243a]. Parking space for Members of Congress.

COMPILER'S NOTE

Act of June 29, 1956, made this section permanent law by inserting the word "hereafter" at the beginning of the section.

REPEATED

Act June 29, 1956, 70 Stat. 447, ch. 479, § 1.
Act July 5, 1955, 69 Stat. 254, ch. 272, § 1.
Act July 1, 1954, 68 Stat. 386, ch. 449, § 1.
Act July 31, 1953, 67 Stat. 290, ch. 299, § 1.
Act. July 5, 1952, 66 Stat. 385, ch. 576, § 1.
Act Aug. 3, 1951, 65 Stat. 167, ch. 292, § 1.

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

(a) The Commissioners of the District of Columbia are authorized, in their discretion, to permit such officers and employees of the District of Columbia Government as the Commissioners may select to park motor vehicles in any building or buildings now or hereafter erected upon squares numbered 490, 491, and 533, and reservation numbered 10, in the District of Columbia, known as the Municipal Center, and to make and enforce regulations for the control of the parking of such vehicles, including the authority to prescribe and collect fees and charges for the privilege of parking of such vehicles.

(b) The Commissioners of the District of Columbia are further authorized, in their discretion, to permit the public to park motor vehicles in such portion or portions of squares numbered 490, 491, and 533, and reservation 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Commissioners for such purpose, and to make and enforce such regulations as the Commissioners may deem advisable for the control of parking in such portion or portions of the Municipal Center as they may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having business in the Municipal Center, and to make and enforce regulations to prohibit parking in all portions of the Municipal Center not set apart by the Commissioners for such purpose. The Commissioners are further authorized in their discretion, to prescribe and collect fees and charges for the privilege of parking motor vehicles in such portion or portions of the Municipal Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Commissioners may install mechanical parking meters or devices.

(c) The Commissioners of the District of Columbia are further authorized to prescribe reasonable penalties of fine not to exceed \$25 or imprisonment not to exceed ten days for the violation of any regulation promulgated under the authority of this section. (June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3.)

COMPILER'S NOTE

This section was not included in prior editions of the code.

CROSS REFERENCE

Reorganization Order No. 18, created in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, an "Administrative Services Office". This office was assigned the duties of maintaining records of space allotted to District employees for parking privately owned motor vehicles on District or Federal property, also to review requests for and make recommendations for assignments and execute control of approved assignments.

§ 40-606 [6:246a]. Negligent homicide.

NOTES TO DECISIONS

CONCURRING NEGLIGENCE

Where, as a consequence of collision of bus and an automobile, deceased motorist was struck by bus or such automobile, or both, joinder of both bus driver and driver of automobile in the same information in prosecution for statutory negligent homicide was proper, and refusal of separate trials was not an abuse of discretion. *Miciotto v. United States* (1952, 91 U. S. App. D. C. 102, 198 F. 2d 951).

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, bus driver and driver of first automobile would be deemed in prosecution under Negligent Homicide Statute to have participated in the same act or transaction or in the same series of acts or transactions constituting the offense charged within meaning of rule that two or more defendants may be charged in an information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

CRIME, ELEMENTS OF

The elements of the corpus delicti of negligent homicide by motor vehicle are the death of a human being, by the instrumentality of a motor vehicle, operated at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

In negligent homicide prosecution against motorist whose automobile entered intersection and struck taxicab which crushed child on curb, corroborating evidence independent of motorist's extrajudicial confessions was sufficiently substantial to establish the element of the corpus delicti that motorist operated his automobile in a careless, reckless or negligent manner in failing to observe and obey stop sign. *Id.*

DEFENSES

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, wherein driver of automobile testified that the first thing he knew, he heard a tremendous noise to his left and his automobile was then hit by the bus, driver of automobile was not entitled to instruction on theory of imminent or unexpected danger. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

EVIDENCE

In prosecution for negligent homicide, there was sufficient substantial independent evidence to corroborate extrajudicial admissions made by defendant to police officers after accident in which his automobile allegedly collided with pedestrian in crosswalk. *Sanderson v. United States* (D. C. Mun. App. 1956, 125 A. 2d 70).

Circumstantial, as well as direct evidence, may supply sufficient corroboration of the corpus delicti in cases of negligent homicide. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

INSTRUCTIONS

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court sufficiently charged with respect to element of causation as to automobile driver, where at outset of instruction court carefully told jury that charge was that defendants operated bus and automobile at an immoderate rate of speed and in such a careless, reckless, and negligent manner as to cause the death of the deceased, and that in order to convict driver of automobile, jury was required first to find that in operation of automobile he violated the law in one of the particulars charged and that such operation was a proximate cause of the death of the deceased. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court properly refused to give requested instruction of driver of automobile that to justify finding of guilt, jury must find beyond reasonable doubt not only that driver of automobile drove automobile at an immoderate rate of speed or negligently, but also that such immoderate rate of speed or such negligence directly and proximately caused death of deceased, since instruction was an erroneous and incomplete statement. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, instruction that if jury found beyond reasonable doubt that bus driver operated bus in a negligent, careless, or reckless manner or at an immoderate rate of speed, and that such operation by bus driver was cause of collision, and that driver of automobile also operated automobile in negligent, careless, or reckless manner or at immoderate rate of speed and that such operation was also a cause of the collision, and collision was proximate cause of death of deceased, it was duty of jury to find both bus driver and driver of automobile guilty, was not subject to objection that it was confusing and did not properly explain theory of causation. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

JOINT TRIAL

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, the case was a proper one in which to order a joint trial of bus driver and driver of first automobile for negligent homicide. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

§ 40-609 [6:247]. Fleeing from scene of accident—
Driving under the influence of liquor or drugs.

(a) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the first offense, be fined not more than \$500, or shall be imprisoned not more than six months, or both; and upon the conviction of his second or subsequent offense, shall be fined not more than \$1,000, or shall be imprisoned not more than one year, or both.

Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the first offense, be fined not more than \$100, or be imprisoned not more than thirty days, or both; and for the second or any subsequent offense, be fined not more than \$300, or be imprisoned not more than ninety days, or both.

(b) No individual shall, while under the influence of any intoxicating liquor or narcotic drug, operate any vehicle in the District. Any individual violating any provision of this subdivision shall upon conviction for the first offense be fined not more than \$500 or imprisoned not more than six months, or both; and upon conviction for the second or any subsequent offense be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this Act, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this Act had not been enacted.

(d) The Commissioners or their designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any

person who is convicted in the District of any of the following offenses:

(1) Operating a motor vehicle while under the influence of any intoxicating liquor or narcotic drug.

(2) Any homicide committed by means of a motor vehicle.

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle.

(4) Reckless driving involving bodily injury.

(5) Any felony in the commission of which a motor vehicle is involved.

(e) Whenever a judgment of conviction of any offense set forth in subsection (d) has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Commissioners or their designated agent, who shall thereupon take the action required by subsection (d) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection—

(1) if no appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken, or

(2) if an appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 7, 8.)

AMENDMENTS

1954—The act of August 16, 1954, amended the section by striking the third sentence from subsection (b) which sentence concerned revocation of an operator's permit upon conviction of a violation of the paragraph, and the manner of certification of a conviction. These matters are covered by new subsections (d) and (e) added to the section by the act.

Subsection (d) adds to the traffic offenses calling for mandatory revocation of an operator's permit homicide committed by an automobile, a person's leaving the scene of an accident involving bodily injury without giving assistance or making his identity or the identity of the vehicle's owner known, reckless driving involving bodily injury, and any felony in the commission of which a motor vehicle is involved.

Subsection (e) requires a court to certify to the Commissioners convictions of the offenses included in subsection (d) just as was previously required on convictions of drunken driving.

INTERNAL REFERENCE

The act referred to in this section is set out in §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, 11-601, 11-616, 11-617, 11-621, 11-623 and 11-1407.

NOTES TO DECISIONS

ARREST WITHOUT WARRANT

Where police officer, in early hours of morning, heard a crash and subsequently received certain information from a citizen, he was justified in stopping defendant's automobile and making inquiries and when, after observing defendant, officer believed him to be intoxicated, he was justified in arresting defendant, without warrant, for driving while under influence of intoxicating liquor. *James C. Johnson v. District of Columbia* (D. C. Mun. App. 1956, 119 A. 2d 444).

DRIVING WHILE INTOXICATED

Evidence sustained conviction for operating automobile while under influence of intoxicating liquor and making an improper turn resulting in collision against a defendant who contended that he had not drunk but was suffering from kidney trouble, low blood pressure, ulcers and shock brought about by collision and that alleged smell of alcohol was caused by medicine. *Idler v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 104).

EVIDENCE

Evidence sustained conviction of operating a motor vehicle while under the influence of intoxicating liquor, where defendant's intoxication was conceded, on the ground that the government's proof was sufficient to establish that defendant operated the vehicle, where the circumstantial evidence in support of the admission by the defendant had the effect of placing him in the driver's position immediately following the accident. *J. G. McKnight v. District of Columbia* (D. C. Mun. App. 1958, 141 A. 2d 922).

Evidence warranted conviction for drunken driving and for driving through safety zone. *Williams v. District of Columbia* (D. C. Mun. App. 1957, 130 A. 2d 596).

In drunken driving prosecution, where government introduced evidence of intoxication and defendant offered medical testimony that his behavior was caused by a blackout and not by intoxication, there was an issue of fact for trier of fact, who was not compelled to give controlling weight to such medical testimony even though no rebutting medical testimony was offered by government. *Id.*

PROOF OF DAMAGE

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence disclosed substantial damage to other vehicle even though there was no proof of cost of repairing the other vehicle. *John A. Russel, Jr. v. District of Columbia* (D. C. Mun. App. 1955, 118 A. 2d 519).

SUBSTANTIAL DAMAGE

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence established that motorist struck another vehicle. *John A. Russel, Jr. v. District of Columbia* (D. C. Mun. App. 1955, 118 A. 2d 519).

§ 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to person tested—Blood test—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

(a) If as a result of the operation of a vehicle, any person is tried in any court of competent jurisdiction within the District of Columbia for (1) operating such vehicle while under the influence of any intoxicating liquor in violation of D. C. Code, title 40, section 609, (2) negligent homicide in violation of D. C. Code, title 40, section 606, or (3) manslaughter committed in the operation of such vehicle in violation of D. C. Code, title 22, section 2405, and in the course of such trial there is received in evidence, based upon a chemical test, competent proof to the effect that at the time of such operation—

(1) defendant's blood contained five one-hundredths of 1 per centum or less, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ per centum of carbon dioxide), or that defendant's urine contained eight one-hundredths of 1 per centum or

less, by weight, of alcohol, such proof shall be deemed prima facie proof that defendant at such time was not under the influence of any intoxicating liquor;

(2) defendant's blood contained more than five one-hundredths of 1 per centum, but less than fifteen one-hundredths of 1 per centum, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ per centum of carbon dioxide), or that defendant's urine contained more than eight one-hundredths of 1 per centum, but less than twenty one-hundredths of 1 per centum, by weight, of alcohol, such proof shall constitute relevant evidence, but shall not constitute prima facie proof that defendant was or was not at such time under the influence of any intoxicating liquor; and

(3) defendant's blood contained fifteen one-hundredths of 1 per centum or more, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ per centum of carbon dioxide), or that defendant's urine contained twenty one-hundredths of 1 per centum or more, by weight, of alcohol, such proof shall constitute prima facie proof that defendant at such time was under the influence of intoxicating liquor.

(b) Upon the request of the person who was tested, the results of such test shall be made available to him.

(c) Only a physician acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a urine specimen or the breath test.

(d) The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the police officer.

(e) Nothing in this section shall be construed to require any person to submit to the withdrawal of blood, the taking of a urine specimen from him, or to a breath test. (Mar. 4, 1958, 72 Stat. 30, 31, Pub. L. 85-338, §§ 1, 2.)

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

§ 40-702. Lien to appear on certificate of title—Effect of other liens.

NOTES TO DECISIONS

RECORDING

A contract, made in District of Columbia, for conditional sale of automobile to resident of Maryland, wherein he used and retained automobile, was not required to be recorded in such District, but was properly recorded in Maryland, law of which requires recordation of such contract where vendee resides. *In re Burton* (1954, 120 F. Supp. 148).

§ 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties and

acknowledged by the owner in the manner provided by law for deeds of real estate. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (As amended June 4, 1952, 66 Stat. 100, ch. 365, § 1.)

AMENDMENTS

1952—The act of June 4, 1952, added the words "serial or identification" between the words "engine" and "number".

§ 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or, if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien and acknowledged by him in the manner provided by law for deeds of real estate. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the Recorder of Deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon each of the cards hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on each of the cards opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (As amended June 4, 1952, 66 Stat. 100, ch. 365, § 2.)

AMENDMENTS

1952—The act of June 4, 1952, added the words "serial or identification" between the words "engine" and "number".

§ 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in section 40-710, shall enter on the face of the certificate and on each of the cards described in section 40-706, and on the instrument, if any, filed in the recorder's

office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than three years, the Recorder of Deeds may destroy the instrument which created such lien and the index cards upon which the lien information was entered: *Provided*, That no other unsatisfied lien is shown on any such index card. (As amended June 5, 1952, 66 Stat. 126, ch. 370, § 4.)

AMENDMENTS

1952—The act of June 5, 1952, added the last sentence.

EFFECTIVE DATE OF AMENDMENT

Section 6 of the act of June 5, 1952, cited to text, provided: "This act shall take effect ninety days after its enactment."

§ 40-713. Recording liens, place and method.

The recorder shall maintain, in the space assigned to him in the office of the director, files wherein he

shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other under the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (As amended June 4, 1952, 66 Stat. 100, ch. 365, § 3.)

AMENDMENTS

1952—The act of June 4, 1952, added the words "serial or identification" between the words "engine" and "number".

Chapter 8.—REGULATION OF PARKING

§ 40-804. Commissioners' powers—Requisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

* * * * *

(g) The power to use moneys in the fund established by section 40-808 for the purpose of widening or channelizing streets or making other street improvements to correct or improve traffic conditions in the vicinity of off-street parking facilities, and to correct traffic conditions resulting from a lack or shortage of parking facilities. (Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-692, § 1.)

AMENDMENTS

1958—Act of August 20, 1958, cited to text, amended the section by adding (g) thereto.

TITLE 41.—PARTNERSHIPS

Chapter 1.—LIMITED PARTNERSHIPS

Sec.

41-111. Effect of failure to acknowledge and record certificate.

§ 41-106 [23: 10]. Acknowledgment and recording.

CROSS REFERENCE

Effect of failure to acknowledge and record certificate, § 41-111.

§ 41-110 [23: 14]. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Act of Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507, related to affidavit as to publication by editors or publishers of newspapers.

§ 41-111 [23: 15]. Effect of failure to acknowledge and record certificate.

If the procedure prescribed in section 41-106 be not made, the partnership shall be deemed general. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508, as repealed and reenacted June 16, 1953, 67 Stat. 62, ch. 117, § 1.)

AMENDMENT

1953—Act of June 16, 1953, struck out sections 41-110, 41-111, 41-112, eliminating the requirement of publication in newspapers and reenacted section 41-111 so as to require compliance with section 41-106.

CROSS REFERENCE

Acknowledgment and recording, § 41-106.

§ 41-112 [23: 16]. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Act of Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1509, related to requirement of publication of the terms of partnership in two newspapers.

TITLE 42.—PERSONAL PROPERTY

Chapter 1.—RECORDATION OF INSTRUMENTS

Sec.

42-104. Void instruments—Disposal.

42-105. Instrument of release.

42-106. Destruction of released instruments.

42-107. False statements—Penalty.

§ 42-101 [25:177]. Recording of bills of sale, chattel mortgages, and deeds of trust.

COMPILER'S NOTE

Section 1 of the act of June 5, 1952, 66 Stat. 126, ch. 370, amended the act of Mar. 3, 1901, 31 Stat. 1275, ch. 854, by renumbering the first paragraph of section 546 as section 546a.

EFFECTIVE DATE OF AMENDMENT

Section 6 of the act of June 5, 1952, provided: "This Act shall take effect ninety days after its enactment".

NOTES TO DECISIONS

RIGHTS OF ATTACHING CREDITOR OF VENDOR

Unrecorded bill of sale to automobile which remained in possession of vendor did not operate to pass title to buyer as against attaching judgment creditor of vendor. *Barlow v. Langlands* (D. C. Mun. App. 1954, 110 A. 2d 688).

§ 42-102 [25:178]. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.

It shall not be necessary for the Recorder of Deeds to spread upon the records of his office the instruments filed pursuant to section 42-101 or section 42-103, but the same shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of said office. (Mar. 3, 1901, ch. 854, § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417; June 5, 1952, 66 Stat. 126, ch. 370, § 2.)

AMENDMENTS

1952—The act of June 5, 1952, renumbered section 546 of the act of Mar. 3, 1901, as 546-C. Section 42-102 previously provided that instruments relating to chattels "shall be indexed in the manner as deeds to real estate are indexed," and contained no exception.

EFFECTIVE DATE OF AMENDMENT

See note following section 42-101.

§ 42-103 [25:179]. Conditional sales.

No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, where the purchase-price exceeds \$100, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and filed in the office of the Recorder of Deeds of the District of Columbia, and said writing shall be indexed as if the purchaser

were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being filed. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 546; June 30, 1902, 32 Stat. 533, ch. 1329; Mar. 3, 1925, 43 Stat. 1103, ch. 417; June 5, 1952, 66 Stat. 126, ch. 370, § 1.)

AMENDMENTS

1952—The act of June 5, 1952, amended the section by striking the last two sentences of the section which established the charge for filing and indexing and the effective date of the section. The act renumbered section 547 of the act of Mar. 3, 1901, as section 546-B.

EFFECTIVE DATE OF AMENDMENT

See note following section 42-101.

§ 42-104. Void instruments—Disposal.

Every instrument filed with the Recorder of Deeds pursuant to section 42-101 or section 42-103 and instruments filed with said Recorder or presented for recording pursuant to sections 40-701 to 40-715, shall be void as against the creditors of the party indebted thereon and subsequent purchasers or mortgagees in good faith after the expiration of seven years from the filing thereof, unless, within ninety days next preceding the expiration of the term of seven years from such filing and each seven-year period thereafter, the vendor, mortgagee, trustee, conditional vendor, or donor shall make and file an affidavit setting forth the amount then due and unpaid: *Provided*, That no such instrument filed prior to September 3, 1952, shall be void as against such creditors, subsequent purchasers or mortgagees, if such affidavit be made and filed within ninety days before the expiration of seven years from the filing of such instrument or one year from September 3, 1952, whichever is later, and each seven-year period thereafter. The Recorder of Deeds shall attach such affidavit after the filing thereof to the instrument to which it relates. The Recorder of Deeds may destroy any such instrument which has become void under the provisions of this subchapter, together with any affidavit, release and assignment relating thereto: *Provided*, That such destruction shall not be effected until the expiration of one year from September 3, 1952: *Provided*, That this paragraph shall not be applicable to any bill of sale, mortgage, deed of trust, or conditional sale of railroad rolling stock filed pursuant to section 42-101 or section 42-103 of this chapter. (Mar. 3, 1901, ch. 854, § 546-D as added June 5, 1952, 66 Stat. 126, ch. 370, § 3; June 18, 1953, 67 Stat. 64, ch. 126, § 1.)

AMENDMENTS

1953—Act of June 18, 1953, added the proviso that this section would not be applicable to any bill of sale, mortgage, deed of trust, or conditional sale of railroad

rolling stock filed pursuant to section 42-101 or section 42-103.

EFFECTIVE DATE OF AMENDMENT

Section 6 of the act of June 5, 1952, cited to text, provided: "This Act shall take effect ninety days after its enactment."

§ 42-105. Instrument of release.

When the debt secured by any instrument filed pursuant to section 42-101 or section 42-103 of this subchapter has been paid in full, the vendor, mortgagee, trustee or conditional vendor or his assignee shall, within twenty days thereafter, (a) execute or cause to be executed a release thereof, acknowledged before a notary public, and (b) deliver or cause to be delivered such release to the Recorder of Deeds. The Recorder (a) shall file the instrument of release by attaching the same to the instrument to which it relates; and (b) shall enter on the released instrument and on the index record thereof the word "released", the date of filing of the instrument of release and a facsimile of his signature. (Mar. 3, 1901, ch. 854, § 546-E, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE OF AMENDMENT

See note following section 42-104.

§ 42-106. Destruction of released instruments.

When any instrument filed pursuant to section 42-101 or section 42-103 of this subchapter has not become void but has, subsequent to September 3, 1952, been released as provided in section 42-105

of this subchapter, the Recorder may, after the expiration of three years from the date of the filing of such release, destroy such instrument, the release, and assignments relating thereto. (March 3, 1901, ch. 854, § 546-F, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE OF AMENDMENT

See note following section 42-104.

§ 42-107. False statements—Penalty.

Any person intentionally making a false statement with respect to an instrument filed with the Recorder of Deeds pursuant to section 42-101 or section 42-103 of this subchapter, or who, after receipt of payment in full of the debt secured by any such instrument, shall, for a period of more than twenty days after written demand by the person indebted, neglect or refuse to execute and file with the Recorder of Deeds a release as provided in section 42-105 of this subchapter, shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this subchapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (Mar. 3, 1901, ch. 854, § 546-G as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE OF AMENDMENT

See note following section 42-104.

TITLE 43.—PUBLIC UTILITIES

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

§ 43-104 [26: 4]. Service.

NOTES TO DECISIONS

IN GENERAL

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94).

JURISDICTION

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak v. Public Utilities Commission* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94).

Chapter 2.—CREATION OF PUBLIC UTILITIES COMMISSION — MEMBERS — COUNSEL — EMPLOYEES

§ 43-201 [26: 126]. Members—Eligibility of Commissioners—Oath.

NOTES TO DECISIONS

UTILITY COMPANIES

Utility companies operating under public franchises and having monopolistic characteristics are subject to special regulations, and cases involving utility's operations are not governed by the ordinary rules applicable to judicial interference in the conduct of a business enterprise. *Public Utilities Commission of District of Columbia v. Capital Transit Co. et al.* (1954, 94 U. S. App. D. C. 140, 214 F. 2d 242).

The Public Utilities Commission of the District of Columbia is the special agency created to perform in the first instance the relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. *Id.*

§ 43-204 [26: 116]. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.

NOTES TO DECISIONS

INJUNCTION

Where it appeared that District of Columbia Public Utilities Commission, in determining whether transit company's depreciation reserve was adequate, might find it necessary to issue an order, which would be subject to judicial review, directing withdrawal of amount from earned surplus, but corporation proposed to pay a dividend from earned surplus, preliminary injunction would be issued restraining corporation from paying proposed dividend pending determination of adequacy of reserve. *Public Utilities Commission of District of Columbia v.*

Capital Transit Co. et al. (1954, 94 U. S. App. D. C. 140, 214 F. 2d 242).

Where it did not appear that there was a substantial likelihood that Public Utilities Commission of the District of Columbia, after investigation of transit company's financial condition, would be able to conclude that proposed retirement of bond issue would so handicap the company as to require the cancellation or modification of retirement program, Commission was not entitled to preliminary injunction restraining retirement pending investigation. *Id.*

§ 43-205 [26: 117]. People's counsel—Duties, term of office, salary, qualifications.

REORGANIZATION PLAN

Section 2 (b) of Reorganization Plan No. 5 of 1952, 66 Stat. 824, abolished the Office of People's Counsel established by section 43-205. The Reorganization Plan is set out in the appendix to Title 1.

§ 43-208 [26: 125]. Orders as to repairs—Improvement in equipment, service.

NOTES TO DECISIONS

BUS LINES

Under statutory provision that Capital Transit Company should succeed to property rights and franchises of Capital Traction and Washington Railway Electric Company, subject to right of Public Utilities Commission to order reasonable extension or reasonable abandonment of tracks and facilities, word "facilities" includes buses, and right of Commission to order reasonable extension is not limited to extension of tracks. *Washington, Marlboro & Annapolis Motor Lines Inc. v. Public Utilities Commission of District of Columbia* (1950, 114 F. Supp. 321).

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-301 [26: 24]. Public utilities—Service and facilities—Charges to be reasonable, just and nondiscriminatory—To obey orders of commission.

NOTES TO DECISIONS

DETERMINATION OF RATE BASE

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Id.*

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of

a rate base. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker*, (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six per cent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

Whether gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas should be considered a prudent investment includible in the rate base is a matter for the District of Columbia Public Utilities Commission. *Washington Gas Light Co. v. Baker, Public Utilities Commission of the District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

In gas rate proceeding, whether risk of obsolescence has been borne by the investor in the past and whether he has been compensated for such risk is an inquiry which must be made in the first instance by the District of Columbia Public Utilities Commission. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

District of Columbia Public Utilities Commission awarding higher gas rates because of past inequities to investors must support the factual premise by evidence in the record, and if the factual premise that past earnings were not sufficient to compensate investors for inadequate depreciation charges is true the commission can properly require the burden to be borne by consumers or to be shared by investors and consumers depending upon the circumstances. *Washington Gas Light Co. v. Baker, Public Utilities Commission of the District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

Gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas is a proper item of expense currently deductible from operating revenues for rate purposes and can be treated as a deferred expense allocable over period of future years. *Washington Gas Light Co. v. Baker, Public Utilities Commission of the District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

Where conversion to natural gas makes retirement of gas manufacturing plant imminent, District of Columbia Public Utilities Commission, in order to depreciate plant at accelerated pace for gas rate purposes, must determine whether investors have already been compensated for the risk that annual depreciation charges would prove inadequate at time of retirement because of obsolescence. *Washington Gas Light Co. v. Baker, Public Utilities Commission of the District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

If District of Columbia Public Utilities Commission includes abandoned property in gas rate base, protection of consumer interest requires that such treatment of abandoned property be offset in the rate of return.

Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

In gas rate proceeding, compensation to investors for risk of obsolescence may be made either through inclusion of obsolescence as one of the elements used in calculating depreciation expense or as risk considered in fixing the permissible rate of return, so if in the past the risk of obsolescence was so provided for, abandoned property should not be included in the rate base. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

The inclusion of items in gas rate base must meet the test of justness and reasonableness to the consumer as well as to the investor. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

The prudent investment theory of gas rate base valuation contemplates that rates will enable investor to maintain his original prudent investment intact until it is recovered through annual charges to depreciation expense reflected in a depreciation reserve, and if a unit of property resulting from prudent investment becomes obsolete before it has been recovered in full by the investor it is not necessarily erroneous as a matter of law for the commission to include such property in the rate base until such recovery has occurred, and such a course may be necessary to assure efficiency and progress in the art and continued attraction of capital to the enterprise. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

Under reproduction cost theory, it is unreasonable to burden public with gas rates based on cost of obsolete and abandoned property which no one will conceivably think of reproducing. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

The prudent investment theory of gas rate regulation requires determination by District of Columbia Public Utilities Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate revenues above operating expenses, including depreciation, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

DETERMINATION OF RATES

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by Public Utility Commission of District of Columbia of power company's system-wide revenues and revenue needs as part of process of reaching approved rate for District of Columbia was proper. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1953, 93 U. S. App. D. C. 194, 213 F. 2d 176).

JURISDICTION

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was

present. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

RATES PREVIOUSLY ESTABLISHED

The legality of past rates cannot be challenged in a gas rate proceeding, and past excessive earnings belong to the gas company and past losses must be borne by the company. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

SERVICE

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

Where broadcasts of "commercials" and "announcements" on vehicles of transit system for the District of Columbia, deprived objecting passengers of liberty without due process of law, such service was not "reasonable service" within the statute requiring public utilities to furnish service and facilities reasonably safe and adequate and just and reasonable, and hence the Public Utilities Commission erred in finding that such broadcasts were not inconsistent with public convenience, and in failing to find that they were unreasonable, and failing to stop them. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

SYSTEM RATES

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and non-discriminatory as a part of, or in relation to, system rates contained in schedules for areas and services beyond jurisdiction of Public Utility Commission of District of Columbia so that District consumers would not subsidize non-District consumers or vice versa. *Capital Transit Co. v. Public Utilities Commission of District of Columbia* (1954, 93 U. S. App. D. C. 194, 213 F. 2d 176).

§ 43-303 [26:26]. Commission to compel compliance with chapters 1-10 of this title, with laws, ordinances and charter—Criminal.

NOTES TO DECISIONS

ADMINISTRATIVE REMEDY

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 92 U. S. App. D. C. 20, 201 F. 2d 708).

JURISDICTION

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

SERVICE

Where broadcasts of "commercials" and "announcements" on vehicles of transit system for the District of Columbia, deprived objecting passengers of liberty without due process of law, such service was not "reasonable

service" within the statute requiring public utilities to furnish service and facilities reasonably safe and adequate and just and reasonable, and hence the Public Utilities Commission erred in finding that such broadcasts were not inconsistent with public convenience, and in failing to find that they were unreasonable, and failing to stop them. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

§ 43-305 [26:28]. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

NOTES TO DECISIONS

METHODS USED BY COMMISSION

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

VALUATION SECTION OF CODE

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

§ 43-306 [26:29]. Property to be valued as of time of evaluation.

NOTES TO DECISIONS

VALUATION

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

VALUATION SECTIONS OF CODE

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

§ 43-317 [26:40]. Sliding scale of rates and dividends.

NOTES TO DECISIONS

RATES FOR EMERGENCY PURPOSES

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

RATES PREVIOUSLY ESTABLISHED

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six percent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and

economic factors had not remained static. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

§ 43-320 [26: 43]. Commission to fix adequate and serviceable standards—Regulations for testing products, service and meters.

NOTES TO DECISIONS

JURISDICTION

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

SERVICE

Where broadcasts of "commercials" and "announcements" on vehicles of transit system for the District of Columbia, deprived objecting passengers of liberty without due process of law, such service was not "reasonable service" within the statute requiring public utilities to furnish service and facilities reasonably safe and adequate and just and reasonable, and hence the Public Utilities Commission erred in finding that such broadcasts were not inconsistent with public convenience, and in failing to find that they were unreasonable, and failing to stop them. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401 [26: 120]. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

NOTES TO DECISIONS

BURDEN OF PROOF

In proceeding by power company, which served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and which was also subject to regulation by other commissions, including Federal Power Commission, before Public Utility Commission of District of Columbia for rate increase, wherein power company's customer, a District of Columbia transit company, intervened as an interested party, burden upon customer to sustain its attack upon order granting rate increases was carried where findings rationally manifesting the method used in determining the rates, essential to adequate review, were lacking. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1953, 93 U. S. App. D. C. 194, 213 F. 2d 176).

DISCRETION OF COMMISSION

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

EFFECT OF JURISDICTIONAL LINES

Where areas served by power company are found to be substantially the same with respect to all features bearing upon reasonableness of power company's rate, and areas are shown to be intimately bound together, there

is not any occasion to separate costs and revenues of power company according to jurisdictional lines, but evidence and findings must bring the situation within such tests if such tests are to apply. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1954, 93 U. S. App. D. C. 194, 213 F. 2d 176).

JURISDICTIONAL LINES

Where problem of determining rate for power company lies across jurisdictional lines and is not solved by the permissible formulae of allocating, as between jurisdictions, either properties, costs, and revenues, or costs and revenues, method which is adopted must be rationally manifested in findings and conclusions, the findings grounded in evidence and the conclusions grounded in evidence and reasoning, which enable the court to support the rates for one jurisdiction alone. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1954, 93 U. S. App. D. C. 194, 213 F. 2d 176).

NOTICE OF HEARING

A motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., was entitled to such notice of hearing conducted by Public Utilities Commission of District of Columbia, relative to whether routes of another bus company operating in area should be extended, as would afford such motor lines reasonable opportunity to protect any of its interests which might be involved, and mere presence of employee of motor lines at such hearing did not meet requirement of reasonable notice, nor did posting of notice in District building. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1950, 114 F. Supp. 321).

PRUDENT INVESTMENT THEORY

A commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1953, 93 U. S. App. D. C. 194, 213 F. 2d 176).

RATE BASE

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions served was not illegal in itself nor upon facts peculiar to power company's case. *Capital Transit Co. v. Public Utilities Commission of District of Columbia et al.* (1953, 93 U. S. App. D. C. 194, 213 F. 2d 176).

In aid of process of rate making within jurisdiction of Public Utility Commission of the District of Columbia, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by Commission. *Id.*

§ 43-408 [26: 60]. Commission may investigate unjust discriminatory rates—No order to be entered without formal hearing.

NOTES TO DECISIONS

FINDINGS OF COMMISSION

Where Public Utilities Commission of the District of Columbia conducted investigation of transit radio service

on busses and streetcars in accordance with prescribed statutory procedure and found that radio reception was not an obstacle to safety of operation, that public comfort and convenience were not impaired and that in fact the creation of better will among passengers tended to improve conditions under which the public rode, concluding that such installation and use were not inconsistent with public convenience, comfort and safety. Board was within its discretion in dismissing investigation. *Public Utilities Commission v. Pollak* (1952, 343 U. S. 451, 72 S. Ct. 813).

PUBLIC OPINION SURVEYS

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. *Public Utilities Commission v. Pollak* (1952, 343 U. S. 451, 72 S. Ct. 813).

SCOPE OF REVIEW

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. *Public Utilities Commission v. Pollak* (1952, 343 U. S. 451, 72 S. Ct. 813).

STATUTORY AUTHORITY

It was within statutory authority of the Public Utilities Commission of the District of Columbia to prohibit or to permit and regulate the receipt and amplification of transit radio programs on streetcars and busses under such conditions that total utility service would not be unsafe, uncomfortable or inconvenient. *Public Utilities Commission v. Pollak* (1952, 343 U. S. 451, 72 S. Ct. 813).

§ 43-411 [26: 63]. Reasonable rates may be ordered—
Notice to be given utility affected thereby.

NOTES TO DECISIONS

DETERMINATION OF RATES

Where power company's rates in District of Columbia are arrived at by formulating schedules on system-wide basis, extending into other jurisdictions, rates must be supported also by findings of similar conditions pertinent to rate-fixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this can not be done, it would seem necessary to resort to allocation. *Capital Transit Co. v. Public Utilities Commission of District of Columbia* (1953, 93 U. S. App. D. C. 194, 213 F. 2d 176).

§ 43-414 [26: 67]. Summary investigation.

NOTES TO DECISIONS

ADMINISTRATIVE REMEDY

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 92 U. S. App. D. C. 20, 201 F. 2d 708).

§ 43-417 [26: 70]. Utility may make complaint.

NOTES TO DECISIONS

ADMINISTRATIVE REMEDY

Where suit by transit company against carrier to obtain injunction against certain competitive bus opera-

tions alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 92 U. S. App. D. C. 20, 201 F. 2d 708).

Chapter 7.—ORDERS AND COURT PROCEEDINGS

§ 43-704 [26: 89]. Application to District Court for instructions—Application for reconsideration.

NOTES TO DECISIONS

PETITION FOR RECONSIDERATION

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section of District Code permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1950, 114 F. Supp. 321).

§ 43-705 [26: 89a]. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

NOTES TO DECISIONS

ADMINISTRATIVE DETERMINATIONS

Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be re-examined by courts under particular statutes providing for the review of "orders". *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

"AFFECTED", DEFINITION

Where order of the Public Utilities Commission authorized District of Columbia transit company to use radio loudspeakers in its vehicles, persons who used the services of the transit and intervened before the Commission were "affected by" the Commission's order and could appeal. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

APPEALS

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law violating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party

claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. D. C. Code 1940, §§ 43-705, 43-706.

DISCRETION OF COMMISSION

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

EVIDENCE 'TO SUPPORT FINDINGS

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman v. Public Utilities Commission of D. of C.* (1952, 105 F. Supp. 553).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and non-discriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

EXHAUSTING ADMINISTRATIVE REMEDY

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section of District Code permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1950, 114 F. Supp. 321).

JURISDICTION OF COURTS

Where order of the Public Utilities Commission dismissing investigation with respect to radio broadcasts on vehicles of the transit system for the District of Columbia was erroneous as matter of law and the District Court dismissed the petitions of appellants on the ground that no legal right of theirs had been invaded, the Court of Appeals was authorized to vacate the judgment of the District Court with instructions to vacate the Commission's order and remand the case to the Commission for further proceedings, and appellants whose constitutional rights were allegedly invaded, were not required to sue out an injunction under the court's general equity powers, in order to obtain relief. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

MOTION TO DISMISS—EFFECT

Where appellants' petition of appeal from an order of the Public Utilities Commission permitting use of radio loudspeakers on vehicles of transit system for the District of Columbia, stated that they were obliged to use the vehicles of the system and were thereby subjected against their will to the broadcasts in issue and the appellees moved to dismiss the petitions, allegations of the petitions were admitted. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

ORDERS, PRESUMPTION OF VALIDITY

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

PERSONS AFFECTED

Where order of the Public Utilities Commission dismissed its investigation of protests by passengers against use of radio loudspeakers on vehicles of transit company of the District of Columbia and the final decision of the Commission was that the transit company could use loudspeakers in its vehicles, the order was appealable. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

RATES, COMPUTATION OF

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

If part of the business of electric power company is subject to state regulation and part is subject to federal regulation, state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by two or more states, no part of it being subject to federal supervision. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Normally, the unit for rate-making purposes for electricity is the entire inter-connected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

§ 43-706 [26: 89b]. Appeal limited to questions of law.

NOTES TO DECISIONS

APPEALS

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

DISCRETION OF COMMISSION

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safe-guarded. *Washington Gas Light Co. v. Baker, Public Utilities Commission of District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 188 F. 2d 11, certiorari denied 340 U. S. 952, 71 S. Ct. 571).

EVIDENCE TO SUPPORT FINDINGS

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

JUDICIAL REVIEW

The District of Columbia Public Utilities Commission should keep in mind its obligation to facilitate judicial review of its orders and should assemble record and make findings which cover all the relevant issues and should indicate the formula chosen and should make clear the evidentiary support for its findings under whatever formula adopted. *Washington Gas Light Co. v. Baker, Public Utilities Commission of the District of Columbia v. Baker* (1950, 88 U. S. App. D. C. 115, 118 F. 2d 11).

ORDERS—PRESUMPTION OF VALIDITY

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

QUESTIONS ON APPEAL

If Public Utilities Commission's order providing for increase in rate to be charged by transit company produces no arbitrary results, court's inquiry is at an end. *Allied Civic Group, Inc., et al. v. Public Utilities Commission* (1954, 125 F. Supp. 453).

RATES, COMPUTATION OF

If part of the business of electric power company is subject to state regulation and part is subject to federal

regulation, state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by two or more states, no part of it being subject to federal supervision. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

Normally, the unit for rate-making purposes for electricity is the entire interconnected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman v. Public Utilities Commission of D. of C.* (1952, 104 F. Supp. 553).

SCOPE OF REVIEW

On appeal from order of Public Utilities Commission of District of Columbia, case is not before court de novo, and court will not consider and review entire record. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1952, 114 F. Supp. 328, affirmed 1953, 206 F. 2d 490).

§ 43-709 [26: 89e]. Authority of Commission to rescind its order after appeal is filed.

NOTES TO DECISIONS

SCOPE OF REVIEW

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1952, 114 F. Supp. 328, affirmed 1953, 206 F. 2d 490).

Chapter 8.—ISSUANCE OF SECURITIES

Sec.

43-802. Certificate of Commission showing authority to issue stock or pay dividends to be obtained.

§ 43-802. Certificate of Commission showing authority to issue stock or pay dividends to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, or pay any stock, bond or scrip dividend, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73; as amended Aug. 4, 1955, 69 Stat. 485, ch. 545, § 2.)

AMENDMENTS

1955—Act of August 4, 1955, 69 Stat. 485, ch. 545, § 2, amended the section by inserting the words "or pay any stock, bond or scrip dividend,".

CROSS REFERENCE

See repeal of section 43-804.

§ 43-804. Repealed. August 4, 1955, 69 Stat. 485, ch. 545, § 1.

Section prohibited public utilities from declaring any stock, bond, or scrip dividend, etc.

CROSS REFERENCE

See amendment to section 43-802.

Chapter 10.—GENERAL PROVISIONS

§ 43-1002 [26: 115]. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.

NOTES TO DECISIONS

JURISDICTION

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

SERVICE

Where broadcasts of "commercials" and "announcements" on vehicles of transit system for the District of Columbia, deprived objecting passengers of liberty without due process of law, such service was not "reasonable service" within the statute requiring Public Utilities to furnish service and facilities reasonably safe and adequate and just and reasonable, and hence the Public Utilities Commission erred in finding that such broadcasts were not inconsistent with public convenience, and in failing to find that they were unreasonable, and failing to stop them. *Pollak v. Public Utilities Commission* (1951, 89 U. S. App. D. C. 94, 191 F. 2d 450).

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

§ 43-1109 [26: 196]. Repealed. August 4, 1955, 69 Stat. 490, ch. 547, § 1.

COMPILER'S NOTE

1955—Act of August 4, 1955, struck out this entire section which dealt with annual reports to Congress by companies, associations or corporations engaged in the manufacture and sale of electricity for illuminating or heating or power purposes or either.

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

Sec.

43-1520b. Arrearage charge.

43-1520c. Commissioners to have authority to fix water rates.

43-1521a. Additional charge on unpaid water bills.

43-1521b. Discontinuance of water service for failure to pay water charges.

43-1521c. Lien for water charges.

43-1521d. Remedies not exclusive.

43-1541. Water and water service supplied for the use of the Government of the United States.

§ 43-1501 [20: 1371]. Water mains, pipes, and fire-plugs—Commissioners have power to erect.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated April 3, 1953, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the appendix to Title 1.

§ 43-1504 [20: 1374]. Fiscal year of water department.

The fiscal year of the water department of the District of Columbia shall conform to the regular fiscal year of the General Government; the rates shall be levied and collected at least once every twelve months, or whenever practicable in the judgment of the Commissioners, at least once every six months. (July 1, 1882, 22 Stat. 144, ch. 263, § 2; May 18, 1954, 68 Stat. 103, ch. 364, § 107.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by striking the word "annually" from the end of the section and substituted the words "at least once every twelve months or whenever practicable in the judgment of the Commissioners at least once every six months."

CROSS REFERENCE

Commissioners authority to make regulations, see § 43-1618.

§ 43-1506 [20: 1376]. Water registrar.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated April 3, 1953 established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the appendix to Title 1.

§ 43-1511 [20: 1381]. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of \$3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of \$4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid: *Provided*, That assessments for water mains and service sewers in the case of lots or parcels of land not more than one hundred feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than one hundred feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water mains or service sewers are laid abutting the same: *Provided*, That corner lots shall be assessed for water mains and service sewers only on their short fronts with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to assessment, as hereinbefore provided: *Provided*, That the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous Act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains: *Provided further*, That when the Commissioners of the District of Columbia shall deem it advantageous to lay water mains or service

sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848; June 4, 1934, 48 Stat. 876, ch. 389, § 1; July 16, 1947, 61 Stat. 360, ch. 258; May 18, 1954, 68 Stat. 109, ch. 218, §§ 301, 302, effective June 30, 1954.)

AMENDMENTS

1954—The act of May 18, 1954, amended the first sentence of the section by increasing the rate of assessment for water mains from \$1.90 to \$3.00 per linear foot, and the rate of assessment for service sewers from \$1.50 to \$4.00 per linear foot for service sewers and water mains constructed after June 30, 1954.

1947—Act of July 16, 1947, fixed the rate of assessment for water mains at \$1.90 per linear foot for water mains constructed on or after July 1, 1947.

1934—Act of June 4, 1934, fixed the rate of assessment for service sewers at \$1.50 per linear foot for sewers constructed on or after July 1, 1934.

§ 43-1520 [20:1390]. Water rents—Rates.

NOTES TO DECISIONS

TORT LIABILITY OF DISTRICT

District of Columbia has no immunity from consequences of its negligent operation of sewerage department. *William E. Scull et al. v. District of Columbia et al.* (1957, 102 U. S. App. D. C. 104, 250 F. 2d 767).

For tort liability purposes, if installation of water mains was a "governmental" function when performed by District of Columbia, District would not be subject to suit. *Id.*

§ 43-1520b. Superseded.

Section, act of June 27, 1942, 56 Stat. 458, ch. 452, § 1, relating to arrearage charges was superseded by the act of May 18, 1954, 68 Stat. 101, ch. 218, § 102, set out in the D. C. Code as section 43-1521a.

§ 43-1520c. Commissioners to have authority to fix water rates.

The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33½ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of section 43-1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101.)

EFFECTIVE DATE

Section 109 of the act of May 18, 1954, provided that sections 101 to 105 of that act (§§ 43-1520c, 43-1521a, 43-1521b, 43-1521c, and 43-1521d of the D. C. Code) would take effect on the first day of the third month following its enactment (August 1, 1954).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1521 [20:1391]. Commissioners to have authority to collect water rates in advance.

NOTES TO DECISIONS

DATE OF LIABILITY

Where plaintiff was highest bidder at a foreclosure sale of realty under a deed of trust, plaintiff became owner as of date of sale and not as of date of delivery of deed for purposes of determining when plaintiff should give notice to Water Registrar of District of Columbia of purchase of such property. *Urciolo v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

LIABILITY OF PURCHASER

One purchasing property within District of Columbia without notifying Water Registrar may be compelled to pay full current water rates for property. *Urciolo v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

SCOPE OF OFFICIAL DUTIES

District of Columbia officials acted within their authority in refusing to turn water on for new principal tenant of premises where owners of premises had not, for many years, paid, or secured to be paid, water rents, and having voluntarily paid such arrearages in order to secure water supply, tenant could not recover from such officials the amount paid by him and damages claimed to have resulted from alleged conspiracy to illegally force him to pay such amount. *Quick v. District of Columbia* (1952, 90 A. 2d 235).

TORT LIABILITY OF DISTRICT

District of Columbia has no immunity from consequences of its negligent operation of sewerage department. *William E. Scull et al. v. District of Columbia et al.* (1957, 102 U. S. App. D. C. 104, 250 F. 2d 767).

For tort liability purposes, if installation of water mains was a "governmental" function when performed by District of Columbia, District would not be subject to suit. *Id.*

§ 43-1521a. Additional charge on unpaid water bills.

An additional charge of 10 per centum shall be added to any water charge remaining unpaid after the expiration of thirty days from the date of rendition of a bill for such charge. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 102.)

COMPILER'S NOTE

Section 102 of the act of May 18, 1954, included in the District of Columbia Code as section 43-1521a supersedes section 43-1520b.

EFFECTIVE DATE

Section 109 of the act of May 18, 1954, provided that sections 101 to 105 of that act (§§ 43-1520c, 43-1521a, 43-1521b, 43-1521c, and 43-1521d of the D. C. Code) would take effect on the first day of the third month following its enactment (August 1, 1954).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

The Commissioners are authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building,

establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within thirty days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Commissioners regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Commissioners shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 103.)

EFFECTIVE DATE

Section 109 of the act of May 18, 1954, provided that sections 101 to 105 of that act (§§ 43-1520c, 43-1521a, 43-1521b, 43-1521c, and 43-1521d of the D. C. Code) would take effect on the first day of the third month following its enactment (August 1, 1954).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1521c. Lien for water charges.

The District shall have a continuing lien for water charges upon any land and the improvements thereon to which water or water service is or has been furnished. Such lien shall have priority over all other liens except liens for District taxes. If any water charges shall remain unpaid after the expiration of two years from the date of rendition of the bill for such charges, or two years from the effective date of this title, whichever is later, the property which has been furnished such water or water service may be sold for such unpaid water charges, together with penalties thereon and costs, at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such water charges, together with penalties thereon and costs, shall not have been paid in full prior to said sale. So much of the proceeds of said sale as represents said unpaid water charges shall be credited to the water fund of the District. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 104.)

EFFECTIVE DATE

Section 109 of the act of May 18, 1954, provided that sections 101 to 105 of that act (§§ 43-1520c, 43-1521a, 43-1521b, 43-1521c, and 43-1521d of the D. C. Code) would take effect on the first day of the third month following its enactment (August 1, 1954).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1521d. Remedies not exclusive.

The remedies set forth in sections 43-1521a, 43-1521b, and 43-1521c are hereby declared to be cumu-

lative and not exclusive. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 105.)

EFFECTIVE DATE

Section 109 of the act of May 18, 1954, provided that sections 101 to 105 of that act (§§ 43-1520c, 43-1521a, 43-1521b, 43-1521c, and 43-1521d of the D. C. Code) would take effect on the first day of the third month following its enactment (August 1, 1954).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1522 [20: 1392]. Water rates not to be a source of revenue.

NOTES TO DECISIONS

GOVERNMENTAL FUNCTION

Circumstance that District was not permitted by Code to make profit on water sold would not convert function of selling water into purely governmental one, such as providing police force for protection of all, and District of Columbia could be held liable for negligent operation of motor vehicle by employee of District government in connection with installation of water mains. *William E. Scull et al. v. District of Columbia et al.* (1957, 102 U. S. App. D. C. 104, 250 F. 2d 767).

§ 43-1540. Loans authorized to expand water system.

(a) The Commissioners of the District of Columbia are hereby authorized to accept loans for the District of Columbia from the United States Treasury and the Secretary of the Treasury of the United States is hereby authorized to lend to the Commissioners of the District of Columbia, such sums as may hereafter be appropriated, to finance the expansion and improvement of the water system when sufficient funds therefor are not available from the District of Columbia water fund established by chapter 15 of title 43: *Provided*, That the total principal amount of loans made under the provisions of this section shall not exceed \$35,000,000: *And provided further*, That a loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District of Columbia for that fiscal year, with a full statement of the work contemplated to be done and the need thereof, and must be specifically approved by the Congress. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the said District of Columbia water fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor and shall be available to the Commissioners or the Chief of Engineers, Department of the Army, for the performance of the said expansion and improvement of the water system, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Water Fund: *Provided*, That any

such loan advanced prior to May 18, 1954, shall, for the purpose of determining the time when repayment thereof shall begin, be deemed to have been credited to the Water Fund on May 18, 1954, and interest accrued on any such loan advanced prior to May 18, 1954, shall be paid at such time and in such manner as the Secretary of the Treasury shall determine: *Provided further*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any loan advanced pursuant to this section. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Water Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending June 30, 1953) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners of the District of Columbia, and shall be payable from the water fund. (June 2, 1950, 60 Stat. 195, ch. 218, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 108.)

AMENDMENTS

1954—The act of May 18, 1954, amended subsection (a) by inserting "\$35,000,000" in lieu of "\$23,000,000". The act amended subsections (c) and (d) so as to change repayment and interest provisions so that all loans under the act of June 2, 1950, are repaid within a 30-year period beginning the second fiscal year after the loans are received, with interest at a rate which is equivalent to the cost of money to the Treasury.

Subsection (e) was amended by striking "beginning with the budget estimates for fiscal year 1961" from the subsection.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 43-1541. Water and water service supplied for the use of the Government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for

at rates comparable to those which may be in effect and charged to State, municipal, or county agencies or other political authorities or jurisdictions within the respective States wherein said Federal facilities may be situated for similar water service from the District water supply system: *Provided*, That conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Commissioners so as to fully protect the prior interests of water consumers within the District: *Provided further*, That as a condition of service, at each point of Federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Commissioners in their discretion deem necessary to control and record the use of water through each such connection. Payment shall be made as provided in subsection (b) of this section. Whenever any payment authorized by this section is made, such payment shall be in lieu of so much of the annual payment authorized by section 47-2501a, as pertains to the Water Fund of the District. The provisions of sections 43-1521a, 43-1521b, and 43-1521c, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the Government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Commissioners the value, as determined by the Commissioners, of the water and water services furnished to the United States during the most recent preceding fiscal year for which such value can be determined, based on the water rates prevailing during the period of consumption, and there shall be appropriated annually for the District to the credit of the said Water Fund, out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954), a sum corresponding to the value of the water and water services furnished the United States. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106.)

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

Chapter 16.—SANITARY SEWAGE WORKS

Sec.

43-1601. Definitions.

43-1602. D. C. Sanitary Sewage Works Fund.

43-1603. Use of the D. C. Sanitary Sewage Works Fund.

43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

Sec.

- 43-1605. Service charges for sanitary sewer service—Authority of Commissioners.
- 43-1606. Methods of determination of sanitary sewer service charges.
- 43-1607. Persons obligated to pay sanitary sewer service charges.
- 43-1608. Meters and measuring devices—Maintenance and repairs.
- 43-1609. Additional charge for overdue bills—Enforcement of lien.
- 43-1610. Sanitary sewer service charges as to churches and institutions.
- 43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.
- 43-1612. Loans from the United States Treasury for sanitary and combined sewer systems of the District.
- 43-1613. Limit of loans for the sanitary and combined sewer systems.
- 43-1614. Use of funds from D. C. Sanitary Sewage Work Fund for certain sewers—Allocation of cost.
- 43-1615. Advancement and availability of funds from loans.
- 43-1616. Repayment of loans.
- 43-1617. Interest rates on loans.
- 43-1618. Commissioners' authority to make regulations.

§ 43-1601. Definitions.

For the purposes of this chapter—

(a) The term "sanitary sewage" means (1) domestic sewage with storm and surface water limited; (2) sewage discharging from sanitary conveniences; (3) commercial or industrial wastes; and (4) water supply after it has been used.

(b) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.

(c) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.

(d) The term "sewer" means a pipe or conduit carrying sewage.

(e) The term "sanitary sewer" means a sewer which carries sanitary sewage.

(f) The term "stormwater sewer" means a sewer which carries stormwater sewage.

(g) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.

(h) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(i) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(j) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 201.)

CURRENT APPROPRIATIONS

Section 205 of the act of May 18, 1954, provided with reference to sections 43-1601 to 43-1617 of this chapter as follows:

"SEC. 205. Notwithstanding the provisions of this title, any current appropriation available to the District for the construction, operation, maintenance, expansion, re-

location, replacement, renovation, and repair of the sanitary sewage works of the District shall remain available for the purposes for which appropriated."

SEPARABILITY CLAUSE

The act of May 18, 1954, the District of Columbia Public Works Act of 1954, contained the following separability clause:

"SEC. 1702. SEPARABILITY CLAUSE.—If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

The District of Columbia Public Works Act of 1954 has been classified to the District of Columbia Code in the following sections: 7-132, 7-133, 7-901, 25-124, 25-138, 40-102, 40-103, 43-1504, 43-1520c, 43-1521a, 43-1521b, 43-1521c, 43-1521d, 43-1540, 43-1541, 43-1601, 43-1602, 43-1603, 43-1604, 43-1605, 43-1606, 43-1607, 43-1608, 43-1609, 43-1610, 43-1611, 43-1612, 43-1613, 43-1614, 43-1615, 43-1616, 43-1617, 46-1618, 47-312, 47-313, 47-501a, 47-1203, 47-1206, 47-1208, 47-1209, 47-1210, 47-1211, 47-1567b, 47-1701, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

SHORT TITLE

Section 1 of the act of May 18, 1954, provided the act should be popularly known as the "District of Columbia Public Works Act of 1954."

§ 43-1602. D. C. Sanitary Sewage Works Fund.

There is hereby created in the Treasury of the United States a special fund which shall be known as the D. C. Sanitary Sewage Works Fund, and which shall be composed of such sums as shall be deposited to the credit of such fund, including, but not limited to, sums received by the Commissioners under the provisions of sections 43-1510 to 43-1517, on account of assessments levied for the construction of sewers and including any payment made to the District by any governmental agency of the States of Maryland or Virginia on account of any sewer service furnished any such agency by the District. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 202.)

§ 43-1603. Use of D. C. Sanitary Sewage Works Fund.

Subject to appropriations, the D. C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Commissioners for—

(a) the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the D. C. Sanitary Sewage Works Fund shall be fixed from time to time by the Commissioners at such a percentage of the total of such expenses for the said sewer systems as the Commissioners, in their discretion, may determine;

(c) payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and re-

pair of the combined sewer system of the District as the Commissioners, in their discretion, determine to be attributable to the sanitary sewer function of such combined sewer system;

(d) payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River Basin;

(e) payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage: *Provided*, That the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this chapter;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this chapter, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of section 204 of this chapter; and

(i) refund of part or all of any sanitary sewer service charges erroneously paid: *Provided*, That application for refund shall be made within two years after such erroneous payment. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 203.)

§ 43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Commissioners, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the moneys deposited to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204.)

§ 43-1605. Service charges for sanitary sewer service—Authority of Commissioners.

The Commissioners are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 206.)

EFFECTIVE DATE

Section 219 of the act of May 18, 1954, established an effective date for sections 206 to 211 of the act which are included in the D. C. Code as sections 43-1605 to 43-1610. Section 219 of the act provided as follows:

"SEC. 219. The provisions of sections 206 to 211, inclusive, of this title shall become effective on the first day of the third month following the enactment of this Act." [August 1, 1954]

§ 43-1606. Methods of determination of sanitary sewer service charges.

The sanitary sewer service charges established under the authority of this chapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 60 per centum of the water charge.

(b) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates, but such percentage shall not exceed 60 per centum of such rates.

(c) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (a) or (b) of this section. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs

devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(d) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be not more than 60 per centum of the water charge which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided*, That all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Commissioners, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207.)

EFFECTIVE DATE

See note under § 43-1605.

§ 43-1607. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District con-

nected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this chapter.

(b) If the sanitary sewer service charge imposed by this chapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 208.)

EFFECTIVE DATE

See note under § 43-1605.

§ 43-1608. Meters and measuring devices—Maintenance and repairs.

All meters or other measuring devices installed or required to be used under the provisions of this chapter shall be under the control of the Commissioners, who shall promulgate all regulations necessary in their judgment to effectuate the purposes of this chapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Commissioners are authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209.)

EFFECTIVE DATE

See note under § 43-1605.

§ 43-1609. Additional charge for overdue bills—Enforcement of lien.

The Commissioners are hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this chapter, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 43-1521a, 43-1521b, 43-1521c, and 43-1521d were set forth in this chapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this chapter: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210.)

EFFECTIVE DATE

See note under § 43-1605.

§ 43-1610. Sanitary sewer service charges as to churches and institutions.

The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Commissioners shall be predicated only on the quantity of water used in excess of the amount fixed by the Commissioners in each case as to which no water charge is made. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 211.)

EFFECTIVE DATE

See note under § 43-1605.

§ 43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section: *Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 43-1606: *Provided further*, That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

(b) For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment, or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the D. C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212.)

§ 43-1612. Loans from the United States Treasury for the sanitary and combined sewer systems of the District.

The Commissioners are hereby authorized to accept loans for the District from the United States

Treasury to finance the construction, expansion, relocation, replacement, or renovation of (1) the sanitary sewer system of the District or (2) the combined sewer system of the District; and the Secretary of the Treasury is authorized to advance such sums as may be appropriated for such purposes. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 213.)

§ 43-1613. Limit of loans for the sanitary and combined sewer systems.

The total principal amount of loans made in connection with the construction, expansion, relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed \$5,000,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214.)

§ 43-1614. Use of funds from D. C. Sanitary Sewage Works Fund for certain sewers—Allocation of cost.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the D. C. Sanitary Sewage Works Fund from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District, but the Commissioners, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D. C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215.)

§ 43-1615. Advancement and availability of funds from loans.

The loans authorized by this chapter shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for the construction, expansion, relocation, replacement, or renovation of all parts of the sanitary sewage works of the District, and shall be available until expended. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 216.)

§ 43-1616. Repayment of loans.

Any loan advanced under this chapter shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the D. C. Sanitary Sewage Works Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the D. C.

Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 217.)

§ 43-1617. Interest rates on loans.

Loans advanced pursuant to this chapter during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 218.)

§ 43-1618. Commissioners' authority to make regulations.

The Commissioners are authorized to make rules and regulations to carry out the provisions of this chapter. (May 18, 1954, 68 Stat. 120, ch. 218, § 1701.)

COMPILER'S NOTE

In addition to the sections contained in this chapter the authority of the Commissioners to make regulations extends to all of the act of May 18, 1954, known as the District of Columbia Public Works Act of 1954, which has been classified to the following sections of the District of Columbia Code: §§ 7-132, 7-133, 7-901, 25-138, 40-102, 40-103, 43-1504, 43-1520c, 43-1521a, 43-1521b, 43-1521c, 43-1521d, 43-1540, 43-1541, 43-1601 to 43-1618, 47-313, 47-314, 47-501a, 47-1203, 47-1206, 47-1208 to 47-1211, 47-1567b, 47-1701, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

44-214a. Fares for schoolchildren not over eighteen years of age.

§ 44-201. Competing lines—Certificates of convenience and necessity.

NOTES TO DECISIONS

APPLICATION OF STATUTE

Provision of District of Columbia Code prohibiting establishment of bus line, competitive with named transit company, over a given route on a fixed schedule, unless Public Utilities Commission has issued certificate to competing carrier that its line is necessary for convenience of public, gives transit company a status which is legally protectible. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 92 U. S. App. D. C. 20, 201 F. 2d 708).

Statutory provision that no competitive street railway or bus line for transportation of passengers of character which runs over a given route on a fixed schedule shall be established without prior issuance of certificate by Public Utilities Commission of District of Columbia to effect that competitive line is necessary for convenience of public covers all kinds of operations of a competitive bus line, regardless of whether they are intrastate or interstate, and such provision is not limited to interstate operations. *Oriole Motor Coach Co. v. Public Utilities Commission* (1953, 111 F. Supp. 621).

FINDING CONCLUSIVE

There was no such absence of substantial evidence in support of Public Utilities Commission's finding that bus service extension was necessary for convenience of public as would overcome conclusiveness thereof. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1952, 114 F. Supp. 328).

INJUNCTION

The Public Utilities Commission of the District of Columbia is not entitled to an injunction restraining a utility from retiring bonds and from paying a proposed dividend, pending Commission's investigation of utility's financial structure, even if neither stockholders nor bondholders nor utility would be significantly injured by delay, unless there appears a legal basis for issuance of injunction. *Public Utilities Commissioner of District of Columbia v. Capital Transit Co. et al.* (1954, 94 U. S. App. D. C. 140, 214 F. 2d 242).

NOTICE OF HEARING

Where, on appeal from order extending bus lines, court found it reasonably possible that a competitor's interests might be adversely affected thereby, but, being unable to determine if such were the fact, remanded the case to the Commission with direction that competitor be accorded a fair hearing after due notice, any defect in original proceeding caused by lack of notice to competitor was corrected by remand and subsequent action of competitor in proceeding. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1952, 114 F. Supp. 328).

§ 44-214a. Fares for schoolchildren not over 18 years of age.

Notwithstanding provisions of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the Dis-

trict of Columbia, and for other purposes", approved January 14, 1933, and the provisions of the unification agreement incorporated therein, and notwithstanding the provisions of the Act entitled "An Act to provide for the transportation of schoolchildren in the District of Columbia at a reduced fare", approved February 25, 1931 (D. C. Code § 44-214), the Public Utilities Commission of the District of Columbia shall fix the rate of fare for transportation by street railway and bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half the cash fare established from time to time by the Public Utilities Commission for regular route transportation within the District of Columbia, and shall establish rules and regulations governing the use thereof. No fares for schoolchildren shall be available to persons over eighteen years of age. (Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1.)

COMPILER'S NOTE

1955—The act of August 9, 1955, cited to text, directs the Public Utilities Commission to fix the rate of fare for schoolchildren at not more than one-half the cash fare established from time to time for regular route transportation. The act of February 25, 1931, 46 Stat. 1419, ch. 302 § 44-214, fixed such fares at a maximum of three cents.

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

Sec.

44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

44-303. Unlawful to operate vehicle without approved bond or policy.

44-304. Commission authorized to make rules and regulations.

44-305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.

44-306. "Owner" defined.

44-307. Penalties.

§ 44-301 [20: 1731a]. Passenger motor vehicles for hire to carry insurance—Exceptions—Sinking fund.

That the Public Utilities Commission of the District of Columbia (hereafter referred to in this

chapter as the "Commission") is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed under section 47-2331 (b), and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each such motor vehicle to be operated, evidence, in such form and on such terms and conditions as the Commission may prescribe with the approval of the Superintendent of Insurance of the District of Columbia (hereafter referred to in this chapter as the "Superintendent"), that such motor vehicle is covered by a bond or liability insurance in a surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any legal obligation of, or judgment recovered against, such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or damage to any property, or both, arising out of the ownership, maintenance, or use of such motor vehicle by any person for any purpose within the United States. Such bond or insurance may limit the liability of the surety or insurer on any one judgment to \$10,000, for bodily injuries or death, and \$5,000 for damage to property, and on all judgments recovered upon claims arising out of the same subject of action to \$20,000 for bodily injuries or death, and \$5,000 for damage to property, to be apportioned ratably among the creditors according to the amount of their respective legal obligations. The liability of an insurance company in any policy of insurance or of any indemnity company in a bond issued pursuant to this chapter shall, within the limits of coverage required by this chapter, become and be absolute for damages adjudged against the insured on account of injuries to or death of persons or damage to or destruction of property resulting from the insured's ownership, maintenance, or use of the motor vehicle or vehicles described in the said policy or bond. (As amended Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2.)

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of the act of August 28, 1958, cited to text, provides as follows: "Sec. 16. Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

1958—Section 1 of the act of August 28, 1958, cited to text provides: "Section 2 of this Act [classified to sections 44-301 to 44-307] may be cited as the 'District of Columbia Taxicab Insurance Act of 1958'".

NOTES TO DECISIONS

CERTIFICATE OF INSURANCE

Where insurance company over its signature on certificate of insurance filed with Public Utility Commission of the District of Columbia by owner of taxicab recited that policy and endorsement on certificate would remain in full force and effect until cancelled, insurance company could not successfully contend that it never in fact executed the endorsement. *Thompson v. Amalgamated Cas. Ins. Co., Inc.* (1953, 92 U. S. App. D. C. 307, 207 F. 2d 214).

COVERAGE IN ACCORDANCE WITH STATUTE

Insurer of owner of taxicab, by signing certificate of insurance filed with Public Utility Commission of the District of Columbia and embodying endorsement stating that coverage was in accordance with statute providing that one operating or running motor vehicle for hire must file with the commission a bond or liability insurance covering any judgment for injury to any person arising from operation of motor vehicle assumed liability for judgment rendered in action for wrongful death occurring in Virginia, while taxicab was being driven by one other than owner, though policy provided for coverage only within District of Columbia while taxicab was being used with permission of owner. *Thompson v. Amalgamated Cas. Ins. Co., Inc.* (1953, 92 U. S. App. D. C. 307, 207 F. 2d 214).

DUTY OF SUPERINTENDENTS OF INSURANCE

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Bennett v. Amalgamated Cas. Ins. Co.* (1952, 91 App. D. C. 279, 200 F. 2d 129).

TERMS AND CONDITIONS OF INSURANCE

Superintendent of Insurance, acting alone, has no power to prescribe the terms and conditions of public liability policies covering taxicabs, since Public Utilities Commission has duty of regulating public liability insurance under statutory provision that taxicab insurance contract shall be in such form and on such terms or conditions as the Commission may direct. *Bennett v. Amalgamated Cas. Ins. Co.* (1952, 91 App. D. C. 279, 200 F. 2d 129).

§ 44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

(a) Any policy of liability insurance required by this chapter shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any bond or undertaking required by this chapter shall be secured by a corporate surety approved by the Superintendent.

(b) No insurance company or corporate surety shall engage in or conduct the business of insuring or bonding any risk arising out of the operation of any passenger motor vehicle for hire required to be insured or bonded under this chapter unless the Superintendent shall find that the management of such company is capable, by experience or otherwise, of conducting such business in the public interest and unless such insurance company or

corporate surety shall possess a certificate of approval issued by the Superintendent for such business. Every such insurance company or corporate surety, whether or not it shall be a mutual company, shall have and shall at all times maintain reserves for losses, unearned premiums, and all other liabilities as will meet the requirements of any regulation issued by the Superintendent applicable to such company or such classifications of companies. The Superintendent is empowered to make reasonable rules and regulations governing the writing of such insurance, and the making of such bonds, and the business of insuring or bonding such risks, including the expenses of management, administration, and acquisition of business and the rates to be charged.

(c) The Superintendent is authorized and empowered, after hearing, to withdraw his certificate of approval of the business of insuring or bonding taxicab risks of any insurance company or corporate surety violating any provision of this chapter or the rules and regulations promulgated hereunder.

(d) No bond or policy of insurance required by this chapter may be canceled unless not less than twenty days prior to such cancellation or termination, notice of intention so to do has been filed in writing with the Commission, unless such cancellation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. (Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2 (2 (a) (b) (c) (d).))

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

See note to section 44-301.

§ 44-303. Unlawful to operate vehicle without approved bond or policy.

It shall be unlawful to operate any vehicle subject to the provisions of this chapter unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided in this chapter. (Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2 (3).)

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (October 27, 1958).

POPULAR NAME

See note to section 44-301.

§ 44-304. Commission authorized to make rules and regulations.

The Commission is empowered to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this chapter. (Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2 (4).)

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

See note to section 44-301.

§ 44-305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.

(a) Any owner of a public vehicle required by this chapter to file a bond or policy of insurance may, in lieu thereof—

(1) file with the Commission a blanket bond or a blanket policy of liability insurance, in an amount to be approved by the Commission, but not to exceed \$75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company or corporation; or

(2) create and maintain a sinking fund in such amount as the Commission may require, but not to exceed \$75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official, or corporation as the Commission shall designate. Such sinking fund shall not be created unless the Commission is satisfied that such owner is possessed and will continue to be possessed of financial ability to pay judgment obtained against such owner. If such a fund has been created, the Commission shall have authority to require whatever evidence of such owner's financial status may be necessary to satisfy the Commission that such owner is possessed and will continue to be possessed of financial ability to pay judgments obtained against such owner, and may at such time or times as, in its discretion, may be necessary, require such owner to submit in affidavit form detailed information from which such ability may be determined. When upon not less than five days' notice and a hearing pursuant to such notice (unless the right to such hearing is waived in writing by such owner) the Commission finds that any such owner having created and maintained a sinking fund is not possessed or probably will not continue to be possessed of financial ability to pay judgments obtained against such owner the Commission shall require that such owner file with the Commission a bond or policy of insurance as described in this chapter in lieu of such sinking fund and shall thereafter return to the owner the amount of such sinking fund when the Commission is satisfied that the maintenance thereof is not needed to assure the payment of any claim or judgment then outstanding against such owner. Failure to pay any judgment within thirty days after such judgment shall have

become final shall constitute a reasonable ground for a finding by the Commission that the owner is not possessed of financial ability to pay judgments.

(b) If any owner elects to comply with paragraph (1) or (2) of subsection (a) of this section, he shall first file with the Commission an admission of liability, in conformity with the principle of respondeat superior, for the tortious acts of the driver or drivers of such vehicle or vehicles displaying the trade name or identifying design of the company or owner.

(c) Any cash or collateral deposit and/or any sinking fund provided for in this chapter shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in this chapter. (Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2 (5).)

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

See note to section 44-301.

§ 44-306. "Owner" defined.

Within the meaning of this chapter, the word "owner" shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees, or

receivers appointed by any court whatsoever, permitting his, their, or its trade name and/or identifying design to be displayed upon vehicles governed by this chapter (Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2 (6)).

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

See note to section 44-301.

§ 44-307. Penalties.

Each violation of this chapter or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety days, and/or cancellation of license (Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2 (7)).

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

See note to section 44-301.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 17 of the act of August 28, 1958, cited to text, provides that section 2 of the act (classified to sections 44-301 to 44-307) shall take effect 60 days after its enactment (Oct. 27, 1958).

POPULAR NAME

See note to section 44-301.

TITLE 45.—REAL PROPERTY

Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

Sec.

45-107. Pension and employee trusts—Laws against perpetuities do not apply.

§ 45-102 [25:112]. Perpetuities—Excepting charitable uses.

NOTES TO DECISIONS

PARTIAL CONSTRUCTION

Where testamentary trust remote gifts were severable from immediate gifts to widow and nephews, court, in will construction case, would not actually determine validity of such remote gifts, but would construe will only, so far as necessary, to determine issue of validity of immediate gifts. *Alonzo O. Bliss, Jr. v. James McD. Shea, and National Savings and Trust Co., etc.* (1956, 97 U. S. App. D. C. 275, 230 F. 2d 825).

RULE AGAINST PERPETUITIES

If a will attempts to make income from testator's estate payable to testator's children for life and then to create life estates in offspring of children, if there be any, for an indefinite number of generations, the rule against perpetuities would be violated, and the gift would be void. *Hilton v. Kinsey et al., Williams et al. v. Kinsey et al., Little Sisters of the Poor et al. v. Kinsey et al.* (1951, 88 U.S. App. D.C. 14, 188 F. 2d 885).

SEVERABLE TRUST PROVISIONS

Where immediate testamentary trust gifts of life estate to widow and remainders to two nephews were valid and severable from subsequent gifts to others, if such subsequent gifts were invalid, such invalidity, under statutory rule against perpetuities, would not affect validity of prior gifts to widow and nephews. *Alonzo O. Bliss, Jr., v. James McD. Shea, and National Savings and Trust Co., etc.* (1956, 97 U. S. App. D. C. 275, 230 F. 2d 825).

§ 45-106 [25:116]. Conveyance of term in excess of one year must be by deed or will.

NOTES TO DECISIONS

LEASE BY AGENT FOR MORE THAN ONE YEAR

Where rental agent executed a lease to owner's property for term of more than one year, such lease was ineffectual beyond one-year period even though agent had authority from owner to execute it, as such a lease was an attempt by an agent to convey an owner's interest in real estate and was prohibited by statute. *Paul v. Holloway, Agent etc.* (D.C. Mun. App. 1956, 124 A. 2d 587).

LEASE BY AGENT-LESSOR

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Maggie E. Paul v. Charles S. Holloway* (D. C. Mun. App. 1956, 122 A. 2d 774).

LEASES—DESIGNATION OF PARTIES

Where body of lease properly designated corporate lessor and individual lessee as such, transposition in attestation clause of words lessee and lessor in such manner as to make clause indicate that individual lessee was the corporation did not invalidate the lease, since intent of parties was perfectly apparent from entire lease, and transposition was mere clerical error. *Capital Linoleum Co. v. Savage* (D. C. Mun. App. 1952, 91 A. 2d 564).

LEASES—NOT UNDER SEAL

A lease for more than a year must be in the form of a deed, signed and sealed by grantor, but there is no requirement that a lease for less than year be under seal. *Binder et al. v. Jaffe* (D. C. Mun. App. 1953, 101 A. 2d 260).

§ 45-107. Pension and employee trusts—Laws against perpetuities does not apply.

Any pension, profit-sharing, stock bonus, annuity, disability, death benefit, or other employee trusts heretofore or hereafter established by employers for the purpose of distributing the income or the principal thereof, or the principal and income thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws of the District of Columbia against perpetuities, against restraints on the power of alienation of title to property, or against accumulation of income, but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purposes for which they are established. (Aug. 25, 1959, 73 Stat. 428, Pub. L. 86-201, § 1.)

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

§ 45-301 [25:141]. Forms of instruments.

NOTES TO DECISIONS

INTENTION OF PARTIES

Where body of lease properly designated corporate lessor and individual lessee as such, transposition in attestation clause of words lessee and lessor in such manner as to make clause indicate that individual lessee was the corporation did not invalidate the lease, since intent of parties was perfectly apparent from entire lease, and transposition was mere clerical error. *Capital Linoleum Co. v. Savage* (D. C. Mun. App. 1952, 91 A. 2d 564).

Chapter 4.—ACKNOWLEDGMENTS

§ 45-401 [25:150]. Acknowledgment by attorney.

NOTES TO DECISIONS

ESTOPPEL

Where rental agent leased property of owner for period of more than one year in violation of statute, and there was no suggestion lessee had committed any fraud, or induced the owner to alter his position to his disadvantage, lessee in subsequent action to recover alleged unpaid rent under lease was not estopped from denying the owner and lessor relationship and hence could invoke the statute prohibiting conveyance by agent. *Paul v. Holloway, Agent etc.* (D.C. Mun. App. 1956, 124 A. 2d 587).

LEASE BY AGENT FOR MORE THAN ONE YEAR

Where rental agent executed a lease to owner's property for term of more than one year, such lease was ineffectual beyond one-year period even though agent had authority from owner to execute it, as such a lease was an attempt by an agent to convey an owner's interest in real estate and was prohibited by statute. *Paul v. Holloway, Agent etc.* (D.C. Mun. App. 1956, 124 A. 2d 587).

Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

§ 45-501 [25: 171]. When deeds take effect.

NOTES TO DECISIONS

CONSTRUCTIVE TRUST

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

UNRECORDED PRIOR LIEN

Where vendor conveyed property and purchaser without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing deeds of trust against the property, fraud in relationship between the vendor and the purchaser did not give vendor a claim superior to that of the trust holders, who occupied the position of bona fide purchasers. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

§ 45-601 [25: 191]. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

NOTES TO DECISIONS

CONSTRUCTIVE TRUST

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

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Where vendor conveyed property and purchaser without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing deeds of trust against the property, fraud in relationship between the vendor and the purchaser did not give vendor a claim superior to that of the trust holders, who occupied the position of bona fide purchasers. *Osin v. Johnson et al.* (1957, 100 U. S. App. D. C. 230, 243 F. 2d 653).

Chapter 7.—RECORDER OF DEEDS

Sec.

45-703a. Civil-service status of employees—Requirements—Procedure.

45-714. Authority of Commissioners to increase or decrease fees.

§ 45-701 [25: 221]. Appointment and duties.

There shall be a Recorder of Deeds of the District, appointed by the Commissioners of the District of Columbia, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all

requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office. No person shall be appointed Recorder of Deeds unless he has been a resident of the District of Columbia for at least five years next preceding his appointment. All of the duties and functions of the Recorder of Deeds and of officers and employees in his office shall be performed subject to the supervision and control of the Commissioners of the District. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 548; June 9, 1952, 66 Stat. 129, ch. 373, § 1; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 2.)

AMENDMENTS

1954—The act of August 3, 1954, added the last sentence concerning supervision and control of the Commissioners over the Recorder of Deeds.

1952—The act of June 9, 1952, substituted appointment by the Commissioners of the District of Columbia for appointment by the President with the advice and consent of the Senate. The act also added the provision requiring at least five years residence in the District of Columbia prior to appointment.

§ 45-702 [25: 222]. Deputy recorder—Duties.

The Commissioners of the District of Columbia are authorized to appoint a deputy recorder of deeds in accordance with the civil-service law and regulations and to fix his compensation in accordance with the Classification Act of 1949, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549; June 9, 1952, 66 Stat. 129, ch. 373, § 2; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 3.)

AMENDMENTS

1954—The act of August 3, 1954, amended the section by striking "The Recorder of Deeds is authorized to appoint a deputy recorder" and inserting "the Commissioners of the District of Columbia are authorized to appoint a deputy recorder of deeds".

1952—The act of June 9, 1952, inserted after "deputy recorder" the words "in accordance with the civil-service law and regulations and to fix his compensation in accordance with the Classification Act of 1949". It appears that the insertion was intended to be made after the first time "deputy recorder" appears in the section.

REFERENCE IN TEXT

The Classification Act of 1949 has been set out as sections 1071 to 1153 of title 5, and section 1138f of title 12, United States Code.

§ 45-703 [25: 223]. Second deputy—His duties and powers.

The Commissioners of the District of Columbia are authorized to appoint a second deputy recorder of deeds in accordance with the civil-service laws and regulations and to fix his compensation in accordance with the Classification Act of 1949. The second deputy recorder may do and perform any and all acts which the Recorder is authorized to do, and all such acts by the second deputy recorder shall have the same legality, force, and effect as if per-

formed by the Recorder. The Commissioners of the District of Columbia shall appoint all employees in the office of the Recorder of Deeds, except the Recorder, in accordance with civil-service laws and fix the compensation of all employees in such office in accordance with the Classification Act of 1949, as amended, and the said Commissioners may delegate to any officer subordinate to them the function of appointing any of the employees in such office other than the Recorder. The number of such employees shall not be in excess of the number actually necessary for the proper conduct of his office. (Mar. 3, 1925, 43 Stat. 1102, ch. 416; June 9, 1952, 66 Stat. 129, ch. 373, § 3; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 4.)

AMENDMENTS

1954—The act of August 3, 1954, amended the first sentence to provide that the Commissioners may appoint a second deputy recorder of deeds, and amended the third sentence of the section to authorize the Commissioners to appoint employees as therein provided.

1952—The act of June 9, 1952, amended the section to conform to the Classification Act of 1949.

REFERENCE IN TEXT

The Classification Act of 1949 has been set out as sections 1071 to 1153 of title 5 and section 1138f of title 12, United States Code.

§ 45-703a. Civil-service status of employees—Requirements—Procedure.

The Civil Service Commission shall confer a competitive civil-service status upon those employees of the office of the Recorder of Deeds of the District of Columbia performing service in such office on June 9, 1952 who are citizens of the United States, and who, within six months after June 9, 1952, are certified by the Commissioners of the District of Columbia, upon recommendation of the Recorder of Deeds, (1) as having been appointed from among the highest available eligibles from an appropriate register of the Civil Service Commission or (2) as having rendered active service in the office of the Recorder of Deeds prior to June 9, 1952, and who qualify in such appropriate noncompetitive examinations as the Civil Service Commission may prescribe. Any employee in the office of Recorder of Deeds who fails to meet the requirements prescribed by this section, or who is not certified by the Commissioners of the District of Columbia, or who fails to take or pass the noncompetitive examination prescribed by the Civil Service Commission, may continue to serve for a period of not more than thirty days after the end of such six-month period or after the establishment of appropriate registers, whichever is the earlier. (June 9, 1952, 66 Stat. 130, ch. 373, § 4.)

§ 45-708 [10: 14]. Fees of recorder of deeds.

* * * *

For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels, including a release of any such instrument, \$2: *Provided*, That for the filing of a release of any such instrument filed prior to September 3, 1952, the Recorder of Deeds shall collect a fee of 50 cents.

For filing an affidavit pursuant to section 42-104, \$2.

* * * *

(As amended June 5, 1952, 66 Stat. 128, ch. 370, § 5.)

AMENDMENTS

1952—The act of June 5, 1952, increased the fee from \$1.50 to \$2.00, added the proviso and the additional provision re fee for filing affidavits.

EFFECTIVE DATE OF AMENDMENT

Section 6 of the act of June 5, 1952, cited to text, provided: "This Act shall take effect ninety days after its enactment."

§ 45-714. Authority of Commissioners to increase or decrease fees.

(a) Notwithstanding the provisions of section 45-708, sections 40-712 and 40-712a, or any other Act of Congress, the Commissioners of the District of Columbia may, from time to time, increase or decrease the fees authorized to be charged for filing, recording, and indexing or for making a certified copy of any instrument; for searching records; for taking acknowledgments; for recording plats; for filing affidavits; for filing certificates of incorporation and amendments of certificates; for recording liens, assignments of liens, or releases of liens on motor vehicles or trailers; or for any other service rendered by the office of the Recorder of Deeds.

(b) The fees for services rendered by the office of the Recorder of Deeds shall be fixed at such rates, computed on such bases and in such manner as may, in the judgment of the Commissioners, be necessary to defray the approximate cost of operating the office of the Recorder of Deeds.

(c) Nothing in this section shall be construed as authorizing the Commissioners to modify any provision of the District of Columbia Business Corporation Act, approved June 8, 1954. (August 3, 1954, 68 Stat. 650, ch. 653, § 1.)

Chapter 8.—ESTATES IN LAND

§ 45-801 [25: 261]. Estates in District.

NOTES TO DECISIONS

LEASEHOLDS

Under District of Columbia law, leaseholds for a term of years are "estates in land." *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 93, 202 F. 2d 461).

WRITTEN CONTRACT

Under District of Columbia law, agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 939, 202 F. 2d 461).

§ 45-804 [25: 264]. Freeholds—Chattels real—Chattel interests.

NOTES TO DECISIONS

CONCURRENT LEASE—CHATTEL REAL

Five year concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to new lessees, was chattel real and interest in land, and lease coupled with assignment entitled new lessees to all rents subsequently accruing on prior lease and all remedies available against tenant by his landlord. *Gulf Motors Inc. et ano. v. Coral L. Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

DISTRRAINT AND SALE

Where Deputy Commissioner of Internal Revenue had complied with all procedural provisions of statute pertaining to distraint and sale of personal property for federal taxes, sale of tenant taxpayer's leasehold interest as chattel was valid. *Stagecrafters' Club, Inc., v. District of Columbia Division of American Legion* (1953, 110 F. Supp. 481).

EXTENDED TIME FOR PERFORMANCE

Under District of Columbia law, provision for time of performance in contract for sale of business and leasehold of premises upon which business was conducted, which contract was required to be in writing and signed by party to be charged, could validly be extended by oral agreement, where time was not of essence of contract. *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 93, 202 F. 2d 461).

INTERESTS SUBJECT TO EXECUTION

Under District of Columbia Law, a leasehold interest in realty for term of years is personal property and subject to execution as such. *Stagecrafters' Club, Inc. v. District of Columbia Division of American Legion* (1952, 110 F. Supp. 481).

LANDLORD'S CONSENT

Under statute pertaining to distraint and sale of personal property for federal taxes, leasehold interest distrained and sold passed by operation of law, and, therefore, landlord's approval thereof was not necessary even though lease contained covenant against assignment without landlord's consent. *Stagecrafters' Club, Inc., v. District of Columbia Division of American Legion* (1953, 110 F. Supp. 481).

LEASEHOLDS

Under District of Columbia law, leaseholds for a term of years are "estates in land". *Jacobsen v. Sweeney* (1953, 92 U. S. App. D. C. 93, 202 F. 2d 461).

OPTION IN LEASE

Where lease was forfeited upon tenant's breach of its covenant that it would not use premises for an unlawful purpose, tenant lost all rights under lease, including option to purchase, and, therefore, fact of existence of option provision in lease would not prevent leasehold interest from being distrained and sold as personal property for federal taxes owed by tenant. *Stagecrafters' Club, Inc., v. District of Columbia Division of American Legion* (1953, 110 F. Supp. 481).

§ 45-812 [25:272]. Vested and contingent future estates.

NOTES TO DECISIONS

VESTED REMAINDER

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix's vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. *Bank of Galesburg etc. v. Lawrenson Jr., etc., and Waters etc.* (1956, 99 U. S. App. D. C. 345, 240 F. 2d 31).

§ 45-816. Tenancies in common and joint tenancies.

NOTES TO DECISIONS

TENANCIES IN COMMON

Where testator devises estate to named persons, to be divided equally, those persons take as tenants in common. *Liberty National Bank of Washington v. Minona Donn Smoot et al.* (1955, 135 F. Supp. 654).

§ 45-820 [25:280]. Estates by sufferance.

NOTES TO DECISIONS

COURT'S FINDING OF FACT

Unless trial court's finding of fact are clearly erroneous, they cannot be disturbed. *Bass v. American Security and Trust Co., Inc.* (D. C. Mun. App. 1956, 124 A. 2d 590).

LIABILITY FOR RENT

Where plaintiff and defendant entered into an oral agreement for the rental of plaintiff's garage at a monthly rate, and defendant vacated garage on first day of August without giving any written notice of his intention to do so, in absence of any waiver by plaintiff, defendant was liable for rent for entire month of August. *Miller v. Plumley* (D. C. Mun. App. 1950, 77 A. 2d 173).

PAYMENT AND ACCEPTANCE OF RENT AFTER NOTICE

Although tenant's wife on September 22 informed landlord's office that she and tenant would vacate apartment within 30 days, and also wrote landlord stating that they wished to move by October 1, where tenant paid and landlord accepted rent for October on October 4, even if notice was valid when given, neither landlord nor tenant was bound by it, and when tenant vacated on October 9, tenant vacated without giving required notice. *Williams v. Tencher-Walker, Inc.* (D. C. Mun. App. 1956, 125 A. 2d 58).

RENEWAL OF LEASE

Where lease contained option to renew for additional term upon giving of written notice by lessee, the mailing of an unsigned renewal notice bearing a rubber stamped mark of tenant's trade name, enclosed in an envelope containing tenant's rental check signed by him and also bearing his trade name, was sufficient compliance with requirements of lease. *George Y. Worthington v. Harry Serkes* (D. C. Mun. App. 1955, 111 A. 2d 877).

STATUTORY TENANCY BY SUFFERANCE

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp. v. M. McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

§ 45-821 [25:281]. Estates from month to month or from quarter to quarter.

NOTES TO DECISIONS

DUE NOTICE TERMINATES

A "tenancy from month to month" is a tenancy for a month certain plus an expectancy or possibility of continuation for one or more similar periods, and until rightful notice of termination is given this expectancy ripens at the turn of each month to a true tenancy for the ensuing month. *Dorado v. Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

§ 45-822 [25:282]. Estates at will—When terminated.

NOTES TO DECISIONS

CONSTRUCTIVE EVICTION

Where new owner, following foreclosure sale of leased premises, made demand for August rent, tenant was not faced with constructive eviction, which would excuse tenant's nonpayment to landlord of rent which was payable in advance on date prior to foreclosure sale, in view of facts that leasehold interest antedated deed of trust and that tenant remained in possession without interruption under same conditions and terms after foreclosure sale as before. *E. Willard Hyde v. Willy Brandler* (D. C. Mun. App. 1955, 118 A. 2d 398).

COVENANT OF QUIET ENJOYMENT

Where holder of landlord's deed of trust caused trustees to foreclose and became new owner, foreclosure sale did not constitute a breach of covenant of quiet enjoyment, and tenant's payment to new owner of rent past due and payable was at tenant's own risk. *E. Willard Hyde v. Willy Brandler* (D. C. Mun. App. 1955, 118 A. 2d 398).

FORECLOSURE LESSEE

Where plaintiff in acquiring a lease as purchaser under foreclosure did not become a landlord but became a substituted lessee entitled to those rights as tenants which had theretofore belonged to the debtor, no notice to quit to debtor as a condition precedent to the filing of a possessory action was required. *Goody's Inc. v. Stern's Equipment Co.* (D. C. Mun. App. 1954, 110 A. 2d 311).

§ 45-823. Provisions applicable to personal property.

NOTES TO DECISIONS

PARTIAL CONSTRUCTION

Where testamentary trust remote gifts were severable from immediate gifts to widow and nephews, court, in will construction case, would not actually determine validity of such remote gifts, but would construe will only, so far as necessary, to determine issue of validity of immediate gifts. *Alonzo O. Bliss, Jr. v. James McD. Shea, and National Savings and Trust Co. etc.* (1956, 97 U. S. App. D. C. 275, 230 F. 2d 825).

SEVERAL TRUST PROVISIONS

Where immediate testamentary trust gifts of life estate to widow and remainders to two nephews were valid and severable from subsequent gifts to others, if such subsequent gifts were invalid, such invalidity, under statutory rule against perpetuities, would not affect validity of prior gifts to widow and nephews. *Alonzo O. Bliss, Jr. v. James McD. Shea and National Savings and Trust Co. etc.* (1956, 97 U. S. App. D. C. 275, 230 F. 2d 825).

Chapter 9—LANDLORD AND TENANT

§ 45-901 [25: 311]. When notice to quit not necessary.

NOTES TO DECISIONS

COURT'S FINDINGS OF FACTS

Unless trial court's findings of fact are clearly erroneous, they cannot be disturbed. *Bass v. American Security and Trust Co., Inc.* (D. C. Mun. App. 1956, 124 A. 2d 590).

EXPIRATION OF TERM

Where tenant was merely continuing in possession after expiration of lease against will of landlord, without payment of rent, tenant was not entitled to notice to quit. *Nickles v. Sullivan* (D. C. Mun. App. 1953, 97 A. 2d 920).

When parties contract for a definite lease term no notice to quit need be given when the term expires. *Keuroglan v. Wilkins* (D. C. Mun. App. 1952, 88 A. 2d 581).

§ 45-902 [25: 312]. Notices to quit—Month to month.

NOTES TO DECISIONS

DATE NOTICE TERMINATES

Notice of termination of tenancy from month to month cannot be made to expire at time other than end of month, notwithstanding Code provision allowing parties to lease to substitute a longer or shorter period of notice than the thirty days which would be otherwise required by Code. *Dorado v. Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. *Dorado v. Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

The validity of a notice to quit a month to month tenancy does not depend upon whether the notice expires on a rent day, but upon whether it expires on the day of the month from which the tenancy began to run, thus notice given to expire on the corresponding current date

to that of the leasehold origin was valid even though the parties had orally agreed to a change in the date of rental payments. *Ourisman Chevrolet v. Zimmelman* (D. C. Mun. App. 1952, 91 A. 2d 709).

DUE PROCESS

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was, without regard to issue of constitutionality of Gwinn Amendment, providing that certain units should not be occupied by any member of organization designated as subversive, arbitrary and violative of due process requirements. *John Rudder and Doris Rudder v. United States of America* (1955, 96 U. S. App. D. C. 329, 226 F. 2d 51; reversing 105 A. 2d 741).

EVIDENCE

On issue as to whether statutory tenant had, under lease provision, waived right to 30 days' notice by using premises for unlawful purpose, evidence would not sustain finding in favor of landlord. *Dunnington v. Thomas E. Jarrell Co.* (D. C. Mun. App. 1953, 96 A. 2d 274).

LICENSEE

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

PURPOSE OF NOTICE

The purpose of the code section respecting tenants' notice of intent to vacate rented premises is not to penalize the tenant but to give the opportunity to the landlord to find a new tenant, and where the failure to give notice results in no loss to the landlord, due to re-letting, an additional month's rent would penalize the tenant and unjustly enrich the landlord contrary to the intent of the statute. *First National Realty Corporation v. Oliver* (D. C. Mun. App. 1957, 134 A. 2d 325).

Where dwelling house was leased on a monthly basis and after paying the first month's rent in advance, the tenants vacated after ten days without notice, the landlord was not entitled to recover an additional month's rent where due to rerenting, it sustained no loss. *Id.*

RECEIPT OF RENT AFTER NOTICE

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

STATUTORY TENANCY BY SUFFERANCE

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp. v. McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

STAY OF PROCEEDINGS

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but,

in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

In landowner's action to recover possession and fair amount as rental from person in possession of property without right, it was error to permanently stay judgment for possession upon payment by defendant of amount adjudged to be due as rental. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

SURRENDER AND ACCEPTANCE

Whether there has been a surrender of premises by a tenant under a tenancy from month to month and an unqualified acceptance by landlord such as to terminate tenancy and relieve tenant from further liability for rent is generally a question of fact, and mere acceptance of key and reentry for purpose of rerenting does not conclusively establish, as a matter of law, that tenant is relieved from further rent. *Thomas D. Walsh, Inc. v. T. H. Moore* (D. C. Mun. App. 1958, 141 A. 2d 754).

TERMINATION BY UNITED STATES

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. *John Rudder and Doris Rudder v. United States of America* (1955, 96 U. S. App. D. C. 329, 226 F. 2d 51; reversing 105 A. 2d 741).

Ordinarily, the United States, like any private landlord, may exercise its right to terminate a monthly tenancy by serving a statutory notice to quit, without revealing any other reason. *Rudder v. U. S. A.* (D. C. Mun. App. 1954, 105 A. 2d 741).

THIRTY-DAY NOTICE

Where Congress amended the District of Columbia Emergency Rent Act providing that for housing accommodations rented on January 1, 1941, maximum rent ceiling should be increased to 20 percent above freeze date rental, on filing by landlord with Rent Administrator of a new rent schedule form, tenants were obligated to pay such authorized increase on filing by landlord of his schedule, and tenants were not entitled to 30-day notice. *Stoner v. Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

Where tenancy by terms of written lease commenced on first day of each month, notice served on June 28, which ordered tenant to quit premises at expiration of 30 days after beginning of her next month's tenancy, complied with statute requiring landlord to give 30 day notice to quit in writing which must expire on day of month from which tenancy begins to run. *Conrad v. Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

Notices to quit demanding that occupants of houses in federal low rent housing project under month to month tenancies, commencing on first day of each month, vacate houses on or before first day of certain month over thirty days after giving notices, were valid as against contention that they should not have expired until 10th of month because of provisions in rental agreements for payment of rent in advance before 1 p. m. each day between 1st and 10th of each month. *Miller et al. v. United States* (D. C. Mun. App. 1950, 77 A. 2d 171).

WAIVER OF NOTICE

In action by landlord against tenant, who took possession as a tenant by the month, to recover a month's rent from tenant, who vacated without giving statutory 30-day notice of his intention to quit, evidence sustained finding that landlord, whose employee took key to premises from tenant without protest and on following day placed rental sign on premises, waived his right to notice. *Thomas D. Walsh, Inc. v. T. H. Moore* (D. C. Mun. App. 1958, 141 A. 2d 754).

WAIVER OF NOTICE BY LANDLORD

In landlord's action to recover leased premises, where trial court fixed amount of tenant's appeal bond at cer-

tain sum provided that tenant paid all rent in arrears, and continued to pay rent as due until final determination of appeal, acceptance of rent thereafter by landlord waived no rights that he had, and tenant was estopped from raising defense that landlord accepted rent after trial, that such constituted waiver of notice to quit. *Conrad v. Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

§ 45-903 [25:313]. Tenancy at will—Notice for termination.

NOTES TO DECISIONS

LICENSEE

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

RECEIPT OF RENT AFTER NOTICE

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

STAY OF PROCEEDINGS

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but, in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

In landowner's action to recover possession and fair amount as rental from person in possession of property without right, it was error to permanently stay judgment for possession upon payment by defendant of amount adjudged to be due as rental. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

§ 45-904 [25:314]. Tenancy by sufferance—When terminated.

NOTES TO DECISIONS

ACCEPTANCE OF RENT

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way effects landlord's right to judgment for possession. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

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PAYMENT AND ACCEPTANCE OF RENT AFTER NOTICE

Although tenant's wife on September 22 informed landlord's office that she and tenant would vacate apartment within 30 days, and also wrote landlord stating that they wished to move by October 1, where tenant paid and landlord accepted rent for October on October 4, even if notice was valid when given, neither landlord nor tenant was bound by it, and when tenant vacated on

October 9, tenant vacated without giving required notice. *Williams v. Tencher-Walker Inc.* (D. C. Mun. App. 1956, 125 A. 2d 58).

STATUTORY TENANCY BY SUFFERANCE

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp. v. McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

STAY OF PROCEEDINGS BY PAYMENT

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but, in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

In landowner's action to recover possession and fair amount as rental from person in possession of property without right, it was error to permanently stay judgment for possession upon payment by defendant of amount adjudged to be due as rental. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

SURRENDER WITHOUT NOTICE

Where plaintiff and defendant entered into an oral agreement for the rental of plaintiff's garage at a monthly rate, and defendant vacated garage on first day of August without giving any written notice of his intention to do so, in absence of any waiver by plaintiff, defendant was liable for rent for entire month of August. *Miller v. Plumley* (D. C. Mun. App. 1950, 77 A. 2d 173).

§ 45-908 [25:318]. Agreement as to notice.

NOTES TO DECISIONS

AGREEMENT AS TO NOTICE

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. *Dorado v. Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

§ 45-910 [25:320]. Ejectment or summary proceedings.

NOTES TO DECISIONS

CONFORMING PLEADINGS TO PROOF

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was not entitled to possession, although his entry had been lawful, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance", in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

DUE PROCESS

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was, without regard to issue of constitutionality of Gwinn Amendment, providing that certain units should not be occupied by any member of organization designated as subversive, arbitrary and violative of due process requirements. *John Rudder and Doris Rudder v. United States of America* (1955, 96 U. S. App. D. C. 329, 226 F. 2d 51; reversing 105 A. 2d 741).

ESTOPPEL

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. *Shapiro v. Christopher* (1952, 90 U. S. App. D. C. 114, 195 F. 2d 785).

GROUND'S FOR EVICTION

Where housing authority in its lease for an apartment in a low-rent housing project constructed under United States Housing Act inserted a provision that it might terminate the lease for any one of eight listed reasons or for others not named, and notice to quit stated reason that tenants in effect had violated Gwinn Amendment when they failed to execute certificate of nonmembership in subversive organization, tenants, in resisting suit by United States for possession, were entitled to show that Gwinn Amendment was unconstitutional. *Rudder v. U. S. A.* (D. C. Mun. App. 1954, 105 A. 2d 741).

TERMINATION BY UNITED STATES

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. *John Rudder and Doris Rudder v. United States of America* (1955, 96 U. S. App. D. C. 329, 226 F. 2d 51; reversing 105 A. 2d 741).

§ 45-911 [25:321]. Arrears of rent and double rent.

NOTES TO DECISIONS

MONEY JUDGMENT

Under District of Columbia Code providing that landlord may join with his claim for recovery of possession of leased premises a claim for arrears of rent, recovery of money judgment is incidental to basic action for possession, the two claims are separate and distinct, and landlord is not required to join claims, but may sue for rent in separate action. *Paregol v. Smith* (D. C. Mun. App. 1954, 103 A. 2d 576).

PLEADING

Under District of Columbia Code providing that landlord may join with claim for recovery of possession of leased premises a claim for arrears of rent, claim for rent may be joined only when possessory action is commenced, and if omitted may not thereafter be added in that suit. *Paregol v. Smith* (D. C. Mun. App. 1954, 103 A. 2d 576).

§ 45-915 [25:325]. Landlord's lien for rent.

NOTES TO DECISIONS

PERFECTION OF LIEN

Invocation of statutory enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels had been brought on premises was not lost when foreclosure sale was had under trust deed. *The Elmira Corp. v. Bulman and Goldstein, Trustees etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

PRIORITY

Where, on March 11, landlord filed complaint against tenant for possession of rented office and for \$250 rental

in arrears, on March 15, dealer engaged in buying, selling, and renting of office furniture purchased tenant's furniture and leased it to tenant and furniture remained on premises, sale did not affect landlord's lien. *J. Recachinas v. M. Kressin etc.* (D.C. Mun. App. 1958, 146 A. 2d 443)

PUNITIVE DAMAGES

Where landlord held tenant's furniture and personal property not only for purpose of collecting overdue rent, but also for purpose of collecting a penalty arbitrarily and illegally sought to be imposed by him, award of punitive damages in tenant's detinue action was proper. *Joseph Katz v. Alice Meyers* (D. C. Mun. App. 1955, 114 A. 2d 75).

PRIORITY

The statutory provisions of the District of Columbia statute giving landlord lien on such of tenant's personal chattels on premises as are subject to execution for debt, do not of their own force create a specific and perfected lien in the sense long understood as essential to overturn the priority granted to claim of United States under federal statute. *United States v. Harry Saidman, Trustee, etc.* (1956, 97 U. S. App. D. C. 344, 231 F. 2d 503).

Landlord's claim under District of Columbia statute giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt could not be granted priority over tax claims of United States for payment out of assets which were in hands of assignee for benefit of creditors, where landlord failed to perfect its lien by acquiring title or taking possession prior to the assignment. *Id.*

SCOPE OF LIEN

Statutory lien for rent should not be extended beyond terms of statute to include other items such as water charges unless clear intention of parties to make this a part of consideration for leasing premises is shown; and such intention did not appear from contract in which covenant to pay water charges was separate from provision setting out rent. *The Elmira Corp. v. Bulman and Goldstein, Trustees etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

Landlord's claim for water charges was a claim for damages for breach of covenant, and did not come within lien for rent. *Id.*

WHEN LIEN ATTACHES

Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by statute. *The Elmira Corp. v. Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

§ 45-916. Lien—How enforced.

NOTES TO DECISIONS

PERFECTION OF LIEN

Invocation of statutory enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels had been brought on premises was not lost when foreclosure sale was had under trust deed. *The Elmira Corp. v. Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

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The statutory provisions of the District of Columbia statute giving landlord lien on such of tenant's personal chattels on premises as are subject to execution for debt, do not of their own force create a specific and perfected lien in the sense long understood as essential to overturn the priority granted to claim of United States under federal statute. *United States v. Harry Saidman, Trustee, etc.* (1956, 97 U. S. App. D. C. 344, 231 F. 2d 503).

Landlord's claim under District of Columbia statute giving landlord rent lien on such of tenant's personal

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Statutory lien for rent should not be extended beyond terms of statute to include other items such as water charges unless clear intention of parties to make this a part of consideration for leasing premises is shown; and such intention did not appear from contract in which covenant to pay water charges was separate from provision setting out rent. *The Elmira Corp. v. Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

Landlord's claim for water charges was a claim for damages for breach of covenant, and did not come within lien for rent. *Id.*

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Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by statute. *The Elmira Corp. v. Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

§ 45-932 [25:342]. Assignee of reversion.

NOTES TO DECISIONS

CONCURRENT LEASE

Where, during monthly tenancy under two year lease containing provision that if tenant should remain in possession after expiration of term, he would become tenant by month, lessors executed five year lease of same property to third party with provisions that new lease was subject to prior lease, and that lessors would assign prior lease to the third parties, and where lessors then completed such assignment, new lease was "concurrent lease", involving assignment of part of reversion, and lessees thereunder could enforce covenants of prior lease against monthly tenant. *Gulf Motors Inc. et ano. v. Coral L. Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

"Concurrent lease" is one granted for term which is to commence before expiration or other determination of previous lease of same premises made to another person, and is assignment of part of reversion entitling lessee to all rents accruing on previous lease after date of concurrent lease, and all remedies as against tenants under previous lease as his lessor would have had except for assignment. *Id.*

Chapter 12.—USES AND TRUSTS

§ 45-1201. The legal estate in cestui que use.

NOTES TO DECISIONS

ACTIVE TRUSTS

Where, at time of his death, testator was sole owner of five parcels of real property and also owned an undivided one-third interest in a great number of other parcels of real property and properties had various types of improvements, in various states of repair, and would be most difficult to dispose of in an orderly fashion, will clause, directing executor-trustee to distribute to the beneficiaries, devisees and legatees any property of any character of which testator died the owner, required fiduciary to undertake sufficiently active duties so that fiduciary would have to take title to real estate and proceed with its distribution as will directed. *Liberty National Bank of Washington v. Minona Donn Smoot et al.* (1955, 135 F. Supp. 654).

If testamentary trustee has duties to perform, trust is active and trustee will take title and administer and manage properties, but if trustee has no duties other than to convey title, trust is passive and title vests in devisees. *Id.*

Chapter 14.—REAL ESTATE AND BUSINESS
BROKER'S LICENSE ACT

§ 45-1401 [20: 1970]. Enactment and prohibition clause.

NOTES TO DECISIONS

BROKER OR ATTORNEY

In prosecution for acting as a real restate broker without first having obtained a license from Real Estate Commission, conflicting evidence as to whether defendant was acting as a broker or as an attorney warranted submission of such question to the jury. *A. M. Wagman v. District of Columbia* (D.C.Mun. App. 1959, 148 A. 2d 308).

In prosecution for acting as real estate broker without first having obtained a license from Real Estate Commission, whether defendant was acting as a broker or as an attorney was a question of fact for determination by jury. *Id.*

PROSECUTION FOR ACTING WITHOUT A LICENSE

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

§ 45-1402 [20: 1971]. Definitions—Exceptions.

NOTES TO DECISIONS

BROKER OR ATTORNEY

In prosecution for acting as a real estate broker without first having obtained a license from Real Estate Commission, conflicting evidence as to whether defendant was acting as a broker or as an attorney warranted submission of such question to the jury. *A. M. Wagman v. District of Columbia* (D.C. Mun. App. 1959, 148 A. 2d 308).

In prosecution for acting as real estate broker without first having obtained a license from Real Estate Commission, whether defendant was acting as a broker or as an attorney was a question of fact for determination by jury. *Id.*

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SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

§ 45-1403 [20: 1972]. Real Estate Commission created — Membership — Seal — Records — Compensation.

CROSS REFERENCE

Commissioners authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952,

and effective September 2, 1952. The function of auditing the accounts of the Real Estate Commission was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 45-1404 [20: 1973]. Qualifications for license.

NOTES TO DECISIONS

PROSECUTION FOR ACTING WITHOUT A LICENSE

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

§ 45-1405 [20: 1974]. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

NOTES TO DECISIONS

ACTION ON BOND

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten v. Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

Where contract between investor and real estate broker involved nothing more than the entrusting of sum of money to broker by investor for investment, and no real estate transaction was involved, investor could not recover for loss of money entrusted to broker from broker's surety on broker's bond under statute requiring every real estate broker to furnish a bond and authorizing persons injured by broker's misconduct to bring suit against surety on bond. *Brooks v. U. S. Fidelity & Guaranty Co.* (D. C. Mun. App. 1954, 109 A. 2d 377).

BROKER'S ACTION ON BOND

A licensed broker who was owed a commission by another broker licensed in the District of Columbia and in Maryland, based on plaintiff broker's sale of certain realty located in Maryland, was not a "person aggrieved" under District of Columbia Code provision requiring a realty broker to secure a bond which "any person aggrieved" shall have a right to sue on, nor was broker a member of the "public" under Maryland statute providing that every licensed realty broker shall provide a corporate bond for the use and benefit of the "public", and therefore, broker was not entitled to recover on either District of Columbia bond or Maryland bond. *H. M. Gilewicz v. Home Indemnity Co.* (D.C. Mun. App. 1959, 150 A. 2d 627).

§ 45-1407 [20: 1976]. Details relating to license.

COMMISSIONERS' AUTHORITY TO CHANGE FEES

Sections 1-252 and 1-253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

NOTES TO DECISIONS

COMMISSION'S AUTHORITY TO SUSPEND

Where real estate broker's license was renewed on July 1, 1958 for one year and on July 2, he was served with an order of Real Estate Commission charging him with

three acts of alleged misconduct occurring prior to July 1, 1958, commission had power to suspend broker's license by reason of charges of misconduct even though commission had knowledge thereof on renewal date of license. *J. H. Eiland v. J. C. Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

PREREQUISITE TO SUIT

The statute prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose does not mean that one earning commission for services in procuring purchaser of realty while duly licensed as real estate salesman cannot recover commission because of his voluntary surrender of license on resigning as salesman in broker's office before execution of sale contract *Riddell v. Howar* (D. C. Mun. App. 1952, 90 A. 2d 925).

RELATIONSHIP OF PARTIES

The act prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose did not bar one who was licensed as real estate salesman in broker's office at time of performing services in procuring purchaser of realty from recovering half of commission under agreement with broker, though such salesman was not licensed when sale contract was executed after salesman's resignation. *Riddell v. Howar* (D. C. Mun. App. 1952, 90 A. 2d 925).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation, for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *J. H. Eiland v. J. C. Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

§ 45-1408 [20: 1977]. Suspension or revocation of license—Causes enumerated.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner v. Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

COMMISSION

Where real estate salesman's efforts produced sale while he was licensed under broker who collected commission, code section making it unlawful for a salesman to accept a commission from anyone other than broker under whom he is licensed, did not bar salesman's recovery for his agreed share of commission even though he had transferred to another broker's office before compensation became due. *Chesser v. Ted Kahn* (D. C. Mun. App. 1956, 124 A. 2d 850).

Statute providing that license of real estate or business chance salesman or broker may be revoked or suspended for various acts including the act of placing a sign on any property, or offering it for sale or for rent without written consent of the owner or his agent, should not be interpreted to nullify a broker's contract for commission merely because contract is oral. *Shaffer v. Berger* (D. C. Mun. App. 1951, 81 A. 2d 469).

Where first broker rather than second broker was suing for commission, the argument that listing upon which second broker acted was not in compliance with statute listing among grounds for revoking a real estate broker's license the offering of property for sale without written

consent of owner or owner's authorized agent, was immaterial. *First National Realty Corporation v. Blackwell Realty Co., Inc.* (D. C. Mun. App. 1950, 77 A. 2d 319).

CONSENT OF OWNER

Where owner of dry cleaning and tailoring business orally agreed to sale of the business to purchaser procured by real estate brokers and to commission for brokers, owner was estopped from denying his obligation on ground that brokers did not first obtain a written listing from owner to sell the business. *Shaffer v. Berger* (D. C. Mun. App. 1951, 81 A. 2d 469).

Real estate brokers were not precluded from recovering commission for obtaining a purchaser for dry cleaning and tailoring business because brokers did not first obtain a written listing from owner of business. *Shaffer v. Berger* (D. C. Mun. App. 1951, 81 A. 2d 469).

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, statute prohibiting real estate broker from offering property for sale without written authorization from owner was not applicable and afforded no defense. *Kyle v. Wiley* (D. C. Mun. App. 1951, 78 A. 2d 769).

ENDANGERING INTERESTS OF PUBLIC

Evidence that real estate broker secured notary public to notarize signature of one of the owners of realty to contract for sale of the realty and recorded the contract with knowledge that signatory had not been before notary and that title was not in the name of the signatory alone, but in her name and that of her son, sustained finding of Real Estate Commission that broker's license as a real estate and business chance broker should be suspended for 60 days. *Brown v. Winston* (1952, 91 U. S. App. D. C. 58, 197 F. 2d 601).

MATTERS CONSIDERED ON REHEARING

Although, once a motion for rehearing is granted by administrative agency, and a rehearing is had, the agency must base its finding on matters introduced in evidence, such rule does not apply where agency is merely considering whether it should exercise its discretion and grant motion for rehearing, and therefore Real Estate Commission of District of Columbia on petitioner's petition for rehearing of suspension of his real estate broker's license, could consider, in addition to petitioner's affidavit for rehearing, counter-affidavits. *Posner v. Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

MISREPRESENTATION

In proceeding to review decision of Real Estate Commission suspending petitioners' licenses for period of ten days, record supported Commission's findings that petitioners had made substantial misrepresentation in advertising property in area zoned against multiple-family dwellings as having apartment, and that petitioner had demonstrated such unworthiness to act as licensed real estate brokers as to endanger interests of public. *Meyer Ehrlich et ano. v. Real Estate Commission* (D. C. Mun. App. 1955, 118 A. 2d 801).

PROSECUTION FOR ACTING WITHOUT A LICENSE

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

STATUTE OF LIMITATIONS

Statutes of limitation are not applicable to proceeding by Real Estate Commission of District of Columbia suspending real estate broker's license. *Posner v. Martin,*

Adams, and Jones, as members of Real Estate Commission, etc. (D. C. Mun. App. 1957, 135 A. 2d 156).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation, for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *J. H. Eiland v. J. C. Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

§ 45-1409 [20: 1978]. Hearing before suspension—Court review—Appeal.

CROSS REFERENCE

See section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia to review any final decision of the Real Estate Commission denying an application for a license or suspending or revoking a license under the provisions of sections 45-1403 to 45-1418.

COMPILER'S NOTE

The provisions in section 45-1409 relating to the review of decisions in the District Court have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such matters.

NOTES TO DECISIONS

ABUSE OF DISCRETION

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner v. Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

MATTERS CONSIDERED ON REHEARING

Although, once a motion for rehearing is granted by administrative agency, and a rehearing is had, the agency must base its findings on matters introduced in evidence, such rule does not apply where agency is merely considering whether it should exercise its discretion and grant motion for rehearing, and therefore Real Estate Commission of District of Columbia on petitioner's petition for rehearing of suspension of his real estate broker's license, could consider, in addition to petitioner's affidavit for rehearing, counter-affidavits. *Posner v. Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

STATUTE OF LIMITATIONS

Statutes of limitation are not applicable to proceeding by Real Estate Commission of District of Columbia suspending real estate broker's license. *Posner v. Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

§ 45-1414 [20: 1983]. Fraudulent transfers or loans.

NOTES TO DECISIONS

PREREQUISITE TO SUIT

The statute prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose does not mean that one earning commission for services in procuring purchaser of realty while duly licensed as real estate salesman cannot recover commission because of his voluntary surrender of license on resigning as salesman in broker's office before execution of sale contract. *Riddell v. Howar* (D. C. Mun. App. 1952, 90 A. 2d 925).

RELATIONSHIP OF PARTIES

The act prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose did not bar one who was licensed as real estate salesman in broker's office at time of performing services in procuring purchaser of realty from recovering half of commission under agreement with broker, though such salesman was not licensed when sale contract was executed after salesman's resignation. *Riddell v. Howar* (D. C. Mun. App. 1952, 90 A. 2d 925).

§ 45-1416 [20: 1985]. Penalties—Prosecutions.

NOTES TO DECISIONS

PROSECUTION FOR ACTING WITHOUT A LICENSE

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner v. District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Chapter 16.—RENT CONTROL

§ 45-1601. Purposes—Time limit.

(a) It is hereby found that the national emergency and the national defense program (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations; (3) have rendered or will render ineffective the normal operations of a free market in housing accommodations; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. Whereupon it is the purpose of this chapter and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national defense program.

(b) The provisions of this chapter, and all regulations, orders, and requirements thereunder, shall terminate on July 31, 1953; except that as to offenses committed, or rights or liabilities incurred, prior to such expiration date, the provisions of this chapter and such regulations, orders, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense. (As amended Mar. 23, 1951, 65 Stat. 25, ch. 16; June 30, 1951, 65 Stat. 98, ch. 192, § 1; June 30, 1952, 66 Stat. 308, ch. 531, § 1; April 30, 1953, 67 Stat. 26, ch. 32, § 1.)

AMENDMENTS

1953—Subsec. (b) amended by the act of April 30, 1953, cited to text, which substituted "July 31, 1953" for "April 30, 1953."

1952—Subsec. (b) amended by the act of June 30, 1952, cited to text, which substituted "April 30, 1953" for "June 30, 1952."

1951—Subsec. (b) amended by the act of March 23, 1951, cited to text, which substituted "June 30, 1951" for "March 31, 1951."

Subsec. (b) amended by the act of June 30, 1951, cited to text, which substituted "June 30, 1952" for "June 30, 1951."

EFFECTIVE DATE OF AMENDMENT OF JUNE 30, 1951

Sec. 2 of act of June 30, 1951, cited to text, provided: "This act shall take effect on the day following the date of its enactment."

SEPARABILITY PROVISIONS, APPROPRIATIONS AND SHORT TITLE

Secs. 12-14 of the act of June 30, 1951, provided:

"Sec. 12. Separability.—If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

"Sec. 13. Appropriation.—There is hereby authorized to be appropriated such funds as may be necessary to carry out the provisions of this Act, to be paid out of money in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated.

"Sec. 14. Short title.—This Act may be cited as the 'District of Columbia Emergency Rent Act of 1951'."

TRANSFER OF FUNCTIONS

See the note under section 45-1606 concerning the reorganization of the Office of the Administrator of Rent Control.

NOTES TO DECISIONS

ACTUAL USE

Under Emergency Rent Act, although a tenant may not at will commit his landlord to a use not intended by landlord, nevertheless if tenant, contrary to lease provision, uses premises for housing with knowledge of landlord who thereafter accepts rent, such actual use determines application of Act, and not intent expressed in lease. *Hohensee v. Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

EXPIRATION OF LAW

Notwithstanding the District of Columbia Emergency Rent Act expired on July 1, 1953, the right to sue for a prior rent overcharge survived. *Jeziorski et al. v. Hollod, Mancini v. Hollod* (D. C. Mun. App. 1954, 106 A. 2d 698).

EXPIRATION OF STATUTE

Where only defense to suit for possession was that premises were protected by rent statute, after rent statute expired, defendant's appeal became moot, and would be dismissed, as remaining question of costs in trial court did not provide justiciable question. *Smith v. Workman* (D. C. Mun. App. 1954, 99 A. 2d 712).

FINDINGS OF FACT

Where rental agent learned that premises leased for office were being used at least in part for housing, but continued to accept rent, award of possession of whole premises to landlord presumably on basis that premises were commercial and were not subject to Emergency Rent Act, was erroneous in absence of finding as to whether uses were severable and, if not, as to which was primary use. *Hohensee v. Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

PRIMARY USE

Under Emergency Rent Act, if rental unit is used for both housing and commercial purposes and is not subject to severability, either commercial or housing use must be given precedence, and which is controlling use is question of fact, and ultimate question is whether use as housing is primary or whether it is merely incidental to commercial use. *Hohensee v. Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

PURPOSE

A primary purpose of rent control legislation is to freeze existing tenancies and assure right of continuing possession to tenants of dwelling property. *Stoner v. Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

RENT CEILING

Rent ceiling established by Administrator under Emergency Rent Act constituted a maximum and did not affect lower amounts agreed to by parties. *Rosenthal v. J. Leo Kolb, Inc.* (D. C. Mun. App. 1953, 97 A. 2d 925).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

RIGHT TO RELIEF

The judgment for tenants in action for double overcharge of rent would not be set aside merely because of ill feeling of plaintiffs against defendants. *Santucci v. Mancuso et al.; Turner v. Mancuso et al.* (D. C. Mun. App. 1951, 78 A. 2d 671).

STIPULATION

In action brought by tenants for double overcharge of rent, trial court properly failed to give effect to a stipulation entered in a previous action involving same subject matter, in view of fact that stipulation related to future proceedings in prior action, and since attempted enforcement of stipulation would have resulted in further delay of a matter which had already been in court too long, and since nonenforcement of stipulation did not prevent defendant who was party to stipulation from making available defenses. *Santucci v. Mancuso et al.; Turner v. Mancuso et al.* (D. C. Mun. App. 1951, 78 A. 2d 671).

§ 45-1602. Maximum rent ceilings and minimum service standards.

Subject to such adjustments as may be made pursuant to sections 45-1603 and 45-1604, maximum-rent ceilings and minimum-service standards for housing accommodations in the District of Columbia shall be the following:

(1) For housing accommodations rented on January 1, 1951, and not under control under this chapter prior to that date, the rent and service to which the landlord and tenant were entitled on that date.

(2) For housing accommodations not rented on January 1, 1951, but which had been rented within the year ending on that date, and not under control under this chapter during that year, the rent and service to which the landlord and tenant were last entitled within such year.

(3) For housing accommodations not rented on January 1, 1951, or within the year ending on that date, and not covered by subsection (4) hereof, the rent and service generally prevailing for comparable housing accommodations as determined by the Administrator.

(4) For housing accommodations under control under this chapter on December 31, 1950, the rent

and service to which the landlord and tenant were entitled on June 30, 1951; except that upon the filing, by any landlord of any housing accommodations covered by this subsection, of a new rent schedule on a form prescribed by the Administrator and setting forth the pertinent circumstances as indicated by such form, the rent and service shall be adjusted and automatically effective upon the date of filing thereof, (A) for housing accommodations rented on January 1, 1941, or within the year ending on that date, so that the maximum-rent ceiling shall be increased to 20 per centum above the rent heretofore frozen at the level of January 1, 1941, or the last rent in the year 1940, whichever was applicable, plus the upward adjustments heretofore authorized by General Orders 12 and 13 of the Administrator; and (B) for housing accommodations not rented on January 1, 1941, or within the year ending on that date, so that the maximum-rent ceiling shall be increased by 2 per centum per year for each calendar year ending after rent schedules for such housing accommodations were first filed in the office of the Administrator, for the calendar years 1941 to 1950, inclusive, to the extent applicable, plus the upward adjustments heretofore authorized by General Orders 12 and 13 of the Administrator. (As amended June 30, 1951, 65 Stat. 99, ch. 192, § 1.)

AMENDMENTS

1951—The Act of June 30, 1951, amended the section generally.

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

ACCOMMODATIONS SUBJECT TO CONTROL

The 1950 amendatory rent control act decontrolling nonhousekeeping housing accommodations rented as rooms and buildings used as rooming houses containing decontrolled housing accommodations, and 1951 act decontrolling furnished nonhousekeeping accommodations and buildings used as licensed rooming houses, decontrolled rooming houses including establishments classified as lodging houses for certain purposes, so that a leased building, known as hotel, but operating under lodging house license, containing nonhousekeeping furnished rooms, and accommodating both transient and permanent guests, was not subject to rent control after effective date of first of such acts. *Zeppos et al. v. Lewis* (D. C. Mun. App. 1954, 107 A. 2d 661).

AUTOMATIC RENT INCREASE

Under amendment to District of Columbia Emergency Rent Act, providing that maximum rent ceilings for accommodations rented on January 1, 1941, should be increased to 20 percent above rent existing on such date, and that upon filing of a new rent schedule by landlord with administrator, new rent should be adjusted and automatically effective, increased rent became binding upon tenant upon landlord's filing of rent schedule, and a thirty day notice to quit was not a necessary prelude to the increase. *De Foe v. Weaver Bros.* (D. C. Mun. App. 1954, 101 A. 2d 515).

Where tenants, petitioning for adjustments in rent and service, at no time made argument that wrongly apportioned taxes or error in calculating automatic statutory increases to landlord had created "peculiar circumstances" or permitted receipt of unduly high rent, questions as to whether two percent calendar year increase in rent had been determined by using proper calendar year basis as provided by law and as to whether taxes had been properly apportioned as to premises were not properly raised, and petitioners' motions for findings with regard

thereto were properly denied. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

BURDEN OF PROOF

Roomer could not recover against owners of rooming house for penalty provided by Emergency Rent Act for depriving roomer of minimum service standards where roomer did not establish the minimum service standard under any of the tests enumerated in the act. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

DETERMINATION BY ADMINISTRATOR

Implicit in rental formula for units rented on January 1, 1941, but improved so as to constitute new housing accommodations, under Act providing that maximum rent ceiling for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations and determined by Administrator, is need for factual determination by Administrator, after application by landlord, as to rent and service generally prevailing for comparable housing accommodations. *Janifer v. Werner* (1952, 90 U. S. App. D. C. 406, 196 F. 2d 244).

Filing by landlord of application with Rent Administrator for determination of rent ceilings is condition precedent to recognition of contractual interim ceilings entered into between landlord and tenant pending determination of rental ceilings by Administrator under Act providing that maximum rent ceilings for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations as determined by Administrator. *Janifer et al. v. Werner* (1952, 90 U. S. App. D. C. 406, 196 F. 2d 244).

DISMISSAL OF PETITION

There was no error in summarily dismissing tenant's petition for adjustments in rent and service where tenant was no longer a resident of premises. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

EVIDENCE, SUFFICIENCY

On appeal from order of rent administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments v. Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

MAXIMUM RENT

The right to collect for rent overcharges may be pursued against an owner who has actually received excessive rents. *Morning Star Lodge No. 40, I. B. P. O. Elks of the World v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Adjustment in rent ceiling granted by administrator had no retroactive effect and operated prospectively only. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Where housing accommodations rented at \$70 per month on January 1, 1941, but in 1946 accommodations were so improved by repairs and construction as to constitute new accommodations and in 1950 landlord and tenant agreed upon rental of \$180 per month, but landlord filed no application with Rent Administrator for determination of rent ceiling, the agreement was invalid leaving ceiling as it was on January 1, 1941, and landlord could not obtain possession because of non-payment of rent of \$180 a month, and tenant could recover double excess charges. *Janifer v. Werner* (1952, 90 U. S. App. D. C. 406, 196 F. 2d 244).

NEW HOUSING ACCOMMODATIONS

In action by tenants against landlord under the District of Columbia Emergency Rent Act to recover overcharges of rent for apartment, wherein landlord contended that apartment came within decontrol provisions of amendment to the act exempting from rent control any housing accommodations, construction of which was completed

after March 31, 1948, or which are additional housing accommodations created by conversion after March 31, 1948, evidence sustained finding that conversion of apartment was substantially completed before March 31, 1948, and that therefore apartment was not exempt from rent control. *Wilson v. Ann Kurimoto* (D. C. Mun. App. 1954, 104 A. 2d 604).

Where landlord, after critical date under Emergency Rent Act, improved a four room house by adding a new room, in a part of which was enclosed a toilet and a bath tub, improved house did not constitute a new housing accommodation under the Emergency Rent Act, necessary for removal of rent ceiling prevailing on critical date. *Macellino v. Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

NOTICE OF INCREASE

Where Congress amended the District of Columbia Emergency Rent Act providing that for housing accommodations rented on January 1, 1941, maximum rent ceiling should be increased to 20 percent above freeze date rental, on filing by landlord with Rent Administrator of a new rent schedule form, tenants were obligated to pay such authorized increase on filing by landlord of his schedule, and tenants were not entitled to 30-day notice. *Stoner v. Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

PECULIAR CIRCUMSTANCES

"Peculiar circumstances" rendering rent ceiling for certain housing accommodations lower than that generally prevailing for comparable accommodations, so as to authorize rent increase under Rent Act, are unusual or special circumstances preventing landlord and tenant from bargaining freely. *Torre v. Berkowitz* (D. C. Mun. App. 1952, 93 A. 2d 87).

Permissibility of increased rent ceilings under revised statute for housing accommodations used by rent control administrator as comparables in establishing rent ceiling for other property, without any statutory provision allowing increase of rent for such property, did not constitute "peculiar circumstances" entitling owner thereof to increase in rent. *Id.*

PURPOSE

Central purpose of Act providing for maximum rent ceilings and minimum service standards is to provide rent ceilings for all housing accommodations. *Janifer v. Werner* (1952, 90 U. S. App. D. C. 406, 196 F. 2d 244).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

§ 45-1603. General and special adjustments.

(a) Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1951, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or

order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

(b) Upon a showing by any landlord of good cause in the judgment of the Administrator that the maximum-rent ceiling on any housing accommodation is substantially lower than the maximum-rent ceiling for comparable housing accommodations located within the same building or group of buildings operated by the same landlord as a single operation, the Administrator may, by special order under this section, adjust such lower ceiling so as to equalize the same with such higher ceiling, and thereupon such adjusted ceilings shall be the maximum-rent ceilings for the housing accommodations subject to such special order.

(c) Upon the showing by any landlord to the satisfaction of the Administrator that the maximum-rent ceilings, on any comparable housing accommodations located within the same building or group of buildings operated by the same landlord as a single operation, will vary in amount due to the effect of General Orders 12 and 13 or similar general orders, the Administrator may, by special order under this section, adjust any or all of such ceilings so as to equalize the same, and thereupon such adjusted ceilings shall be the maximum-rent ceilings for the housing accommodations subject to such special order. (As amended June 30, 1951, 65 Stat. 100, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, added subsections (b) and (c). "Jan. 1, 1951" was substituted for "Jan. 1, 1941" in subsection (a).

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1606.

NOTES TO DECISIONS

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

§ 45-1604. Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling

applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise in taxes or other maintenance or operating costs or expenses over those prior to January 1, 1951, or (2) a substantial capital improvement including furniture and furnishings or alteration made since January 1, 1951; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided*, That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(c) Any tenant may petition the Administrator on the ground that the service supplied to him is less than the service established by the minimum-service standard for his housing accommodations; whereupon the Administrator may order that the service be maintained at such minimum-service standard, or that the maximum-rent ceiling be decreased to compensate for a reduction in service, as he deems necessary or appropriate to carry out the purposes of this chapter.

(d) Any landlord may petition the Administrator for permission to reduce the service supplied by him in connection with any housing accommodations; whereupon the Administrator, if he determines that the reduction of such service is to be made in good faith for valid business reasons and is not inconsistent with carrying out the purposes of this chapter, may, by order, reduce the minimum-service standard applicable to such housing accommodations and adjust the maximum-rent ceiling downward in such amount as he deems proper to compensate therefor.

(e) Any tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling permits the receipt of an unduly high rent; whereupon the Administrator may by order adjust such maximum-rent ceiling in such manner or amount as shall, in his judgment, effectuate the purposes of this chapter and provide a fair and reasonable rent for such housing accommodations, but not less than the generally prevailing rate for comparable housing accommodations.

(f) A petition made pursuant to this section shall be subject to the provisions of sections 45-1608 and

45-1609 of this chapter. Any adjusted maximum-rent ceiling or minimum-service standard ordered pursuant to this section shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto; except that, in the event that the adjustment order is stayed or set aside by the court in accordance with section 45-1609 of this chapter, the maximum-rent ceiling and minimum-service standard theretofore applicable to such housing accommodations under this chapter remain in full force and effect.

(g) Upon the expiration of forty-five days after the date of the filing of any petition by any landlord for adjustment of the maximum-rent ceiling under the provisions of subsection (b) of this section, the maximum-rent ceiling for the housing accommodations covered by such petition automatically shall become the ceiling requested in such adjustment petition, unless and until such adjustment petition shall have been finally disposed of by the Administrator or his office, pursuant to the provisions of this section and the provisions of sections 45-1608 and 45-1609. Upon such final disposition, if the maximum-rent ceiling provided by this subsection during the pendency of such adjustment petition shall exceed the maximum-rent ceiling as finally disposed of by the Administrator or his office, any tenant having paid such excess or any part thereof shall be entitled to a refund to the extent of such payment, but the landlord shall not be liable for any penalties under the provisions of this chapter. (As amended June 30, 1951, 65 Stat. 100, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, amended the section generally.

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

ADJUSTMENT FOR CAPITAL IMPROVEMENTS

Under District of Columbia Code relating to adjustments of maximum rent, power of rent administrator is discretionary and is coupled with duty to maintain rent ceilings in a given instance to that of the rent scale generally prevailing for comparable housing accommodations, and the director is not required as a matter of law to grant a landlord adjustments for capital improvements. *Zenith Apartments v. Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

ADJUSTMENT, WHEN EFFECTIVE

Where, because of substantial improvements made to apartment after January 1, 1951, adjustment of rent ceiling was sought in petition filed by realty broker on June 20, 1951, but rent administrator did not act upon petition, District of Columbia Emergency Rent Act of 1951, which became effective on July 1, 1951, and which provided that 45 days after filing of petition requested adjusted ceiling would automatically become legal rent ceiling unless and until adjustment petition should have been finally disposed of, was applicable, even though 1951 act did not refer to pending petitions, but retroactive effect could not be given to 45 day period fixed in statute and increased rent could not be charged until 45 days had elapsed after effective date of act. *J. Leo Kolb Co., Inc. v. William L. S. Williams* (D. C. Mun. App. 1955, 111 A. 2d 469).

Adjustment in rent ceiling granted by administrator had no retroactive effect and operated prospectively only. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

ADOPTION OF CEILING

A determination of rent ceiling is made when no frozen ceiling exists, and an adjustment is made under Rent Act for cause shown. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

AUTOMATIC RENT INCREASES

Where tenants, petitioning for adjustments in rent and service, at no time made argument that wrongly apportioned taxes or error in calculating automatic statutory increases to landlord had created "peculiar circumstances" or permitted receipt of unduly high rent, questions as to whether two per cent calendar year increase in rent had been determined by using proper calendar year basis as provided by law and as to whether taxes had been properly apportioned as to premises were not properly raised, and petitioners' motions for findings with regard thereto were properly denied. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

CEILING

Under the Rent Act, rental rate of premises, rented on January 1, 1941, became the automatic or frozen ceiling. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

EQUITABLE ESTOPPEL

Where findings as to maximum rent ceilings were not appealed from and were made as necessary part of order by rent administrator increasing rent on petition of landlord, landlord, who accepted such increases, was estopped from attacking findings on which increases were based. *Cogswell v. Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

EVIDENCE, SUFFICIENCY

On appeal from order of rent administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments v. Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

FINDINGS CONCLUSIVE

Rent Administrator's finding of fact, concededly authorized and material to unappealed ruling made by him in proceeding to adjust upward the rent ceilings, could not subsequently be attacked in another proceeding between the same parties. *Aiken v. Cogswell et al.* (1952, 91 U. S. App. D. C. 339, 201 F. 2d 705).

NATURE OF PROCEEDING

Before Administrator of Rent Control can make an adjustment of rent ceiling, there should be some written petition therefor, stating grounds on which adjustment is sought, in order that all parties, including Administrator, may be informed of nature of proceeding and go forward in an orderly manner. *Marcellino v. Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

PECULIAR CIRCUMSTANCES

Permissibility of increased rent ceilings under revised statute for housing accommodations used by rent control administrator as comparables in establishing rent ceiling for other property, without any statutory provision allowing increase of rent for such property, did not constitute "peculiar circumstances" entitling owner thereof to increase in rent. *Torre v. Berkowitz* (D. C. Mun. App. 1952, 93 A. 2d 87).

"Peculiar circumstances" rendering rent ceiling for certain housing accommodations lower than that generally prevailing for comparable accommodations, so as to authorize rent increase under Rent Act, are unusual or special circumstances preventing landlord and tenant from bargaining freely. *Torre v. Berkowitz* (D. C. Mun. App. 1952, 93 A. 2d 87).

PETITION

Realty broker's filing of petition for adjustment of rent with rent administrator did not automatically increase rent ceiling or entitle landlord to charge the requested increase. *J. Leo Kolb Co., Inc. v. William L. S. Williams* (D. C. Mun. App. 1955, 111 A. 2d 469).

In tenant's proceeding for rent reduction, where landlord did not file petition for adjustment of rent ceiling and did not formally ask for affirmative relief, but instead at close of hearing moved orally for an order setting a ceiling on premises, request was too informal in nature and was properly denied. *Marcellino v. Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

PREREQUISITES FOR NEW CEILING

Fact that a landlord has so changed housing accommodations on which rent ceiling had been established as to convert accommodations into new accommodations, does not entitle landlord to collect a contractual interim ceiling without first filing an application for rent increase. *Fowler v. Stanford* (D. C. Mun. App. 1952, 89 A. 2d 885).

QUESTION OF FACT

In suit by tenants against landlord for overcharges of rent for period of 46 weeks, wherein it appeared that for the last three weeks only, receipts had been issued by landlord containing words "including parking lot", question whether for the last three weeks a new and separate agreement had been reached for charge of rent for parking space, or whether landlord continued to exact an overcharge in the guise of a parking charge, was one of fact. *Clark v. Coziahr et al.* (D. C. Mun. App. 1954, 102 A. 2d 311).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

RIGHT OF APPEAL

Statutory authority of Municipal Court of Appeals to review orders of Administrator of Rent Control was not applicable to order of Administrator dismissing application of tenants to reopen case in which examiner recommended an order adjusting maximum rent ceiling, which order became final order of Administrator. *Nolan v. Cogswell* (D. C. Mun. App. 1952, 91 A. 2d 832).

§ 45-1605. Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standards, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (A) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this chapter or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (B) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes; or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling: *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no such action or proceeding under this paragraph or paragraph (3) of this section shall be maintained unless the landlord is a bona fide owner of stock in, or member of, such cooperative corporation or association and has actually paid in in cash at least 20 per centum of the full purchase price of the stock, proprietary lease, or other evidence of ownership entitling the landlord to possession of such housing accommodations, or was, immediately prior to July 1, 1951, entitled to recover possession.

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy; or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with, and approved by, the Commissioners of the District of Columbia; or

(5) The landlord seeks in good faith to recover possession for the immediate purpose of discontinuing the housing use and occupancy for a continuous period of not less than six months, during which period, commencing on the date possession is recovered under this subsection, it shall be unlawful for the owner of such housing accommodations or his agent to demand or receive rent for the same, and any person paying such rent may bring an action for double the amount of rent so paid, pursuant to the provisions of section 45-1610; or

(6) The landlord, being a recognized school or an accredited nonprofit university, has a bona fide need for the premises for educational, research, administrative, or dormitory use.

(c) It shall be unlawful for any person to remove, or attempt to remove, from any housing accommodations the tenant or occupant thereof or to refuse to renew lease or agreement for the use of such accommodations because such tenant or occupant has taken or purposes to take action authorized or required by this chapter or any regulation, order, or requirement thereunder. (As amended June 30, 1951, 65 Stat. 102, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, deleted the last sentence of the first paragraph referring to refunds; substantially amended subsections (b) (2) and (b) (5), and added subsection (b) (6).

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

AGENT

Where complaint in action under Rent Act stated only that landlord's rental agent failed to provide minimum service in violation of standards fixed by rent administrator, and neither claimed nor showed any other basis for liability, and neither Rent Act nor lease agreement imposed such duty on agent, under no stated facts which could be proved in support of tenant's claim would tenant be entitled to relief, and summary judgment for agent was properly granted. *Reyman v. Edward H. Jones & Co.* (D. C. Mun. App. 1953, 96 A. 2d 42).

AGREEMENT OF PARTIES

Unless premises have been decontrolled, rent ceiling remains effective regardless of any agreement to the contrary made by the landlord and tenant. *Jess Fisher & Co. v. Hicks* (D. C. Mun. App. 1952, 86 A. 2d 177).

APPROVAL OF PLANS

Where department of building inspection had issued raze permit authorizing demolition of demised buildings and had issued a building permit authorizing erection of shed on the leveled lot, which was to be used as a parking lot, there was sufficient approval of parking lot project plans by District of Columbia commissioners as to entitle landlord to possession of demised premises under District of Columbia Emergency Rent Act. *Ancher v. Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

BAD FAITH

Evidence of ill will between landlord and tenant and a desire by the landlord to dispossess the particular tenant is not evidence of bad faith precluding landlord from obtaining possession under provision of Emergency Rent Act giving landlord right of possession if for any reason he in good faith is willing to discontinue the housing use and occupancy for a continuous period of not less than six months. *Beckwith et al. v. Klein* (D. C. Mun. App. 1952, 93 A. 2d 283).

In tenant's suit against landlords to recover for alleged rental overcharges, fact that landlords had, prior to beginning of tenancy, rented premises to another person at the January 1, 1941, frozen rent ceiling of \$41 a month, was sufficient to raise an inference of lack of good faith on part of landlords when they subsequently collected \$77.50 a month rental. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

"Ill will" of landlord seeking possession against tenant on ground that he desires possession in good faith for his own personal occupancy is not automatically established from evidence that there had been a prior rent control proceeding between the parties or from reasonable regulation of tenant's use of leased premises. *Dant v. Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use, and occupancy as dwelling by purchaser, evidence of looseness and some suspicious circumstances attending sale were by no means strong enough to require trial court or appellate court sitting in review to hold as a matter of law that there was bad faith in transaction or that purchaser had not acquired property for his own use. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

BROKER'S COMMISSION

Where broker was not a party to alleged illegality of sale contract under Rent Act, and in procuring, purchaser did not act with knowledge that alleged illegality existed, broker's right to commission when purchaser was ready,

able and willing to proceed with contract, but owner refused to do so, was unimpaired. *Harris v. Young* (D. C. Mun. App. 1952, 86 A. 2d 414).

CHOICE OF OCCUPANCY

A landlord who has the choice of several properties should not be prejudiced in desiring occupancy of particular living quarters from tenant thereof. *Dant v. Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

CONSTRUCTION

Provision of Emergency Rent Act permitting landlord to obtain possession of housing accommodation if landlord seeks in good faith to recover possession for immediate purpose of discontinuing housing use and occupancy for a continuous period of not less than six months, was enacted for benefit of landlords, and enables a landlord to obtain possession if, for any reason, he is in good faith willing to discontinue housing use and occupancy for required period, with good faith being dependent on his willingness, intention and purpose to discontinue use for required period. *Beckwith v. Klein* (D. C. Mun. App. 1952, 93 A. 2d 283).

EVIDENCE

While evidence of ill will toward a tenant is properly received in evidence in determining whether landlord seeks possession in good faith or whether his dominant motive is to rid himself of tenant, such evidence must be based on more than mere speculation. *Dant v. Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

Where there was no evidence that landlords seeking possession of premises from tenant on ground that landlords desired possession in good faith for personal occupancy was actuated by caprice or malice, landlords were entitled to judgment granting possession, in absence of challenging evidence sufficient to justify a finding of lack of good faith. *Dant v. Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

In action by landlord against tenant to recover possession of dwelling house on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, evidence sustained trial court's finding that plaintiff had in good faith contracted as alleged. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, trial court did not err in accepting evidence tending to destroy any presumption of bad faith which might have arisen from fact that landlord had prosecuted three earlier suits for possession, unsuccessfully, within period of seven months. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

EVIDENCE, SUFFICIENCY OF

In action by landlord for possession of housing accommodations pursuant to statute authorizing same if landlord seeks in good faith to recover possession for immediate purpose of discontinuing housing use for continuous period of not less than six months, evidence on behalf of tenant was insufficient to show lack of good faith of landlord. *Beckwith v. Klein* (D. C. Mun. App. 1952, 93 A. 2d 283).

In landlord's action under Rent Act to recover possession of leased premises for immediate purpose of substantially altering and remodeling property, evidence was sufficient to justify conclusion that possession was sought in good faith. *Conrad v. Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

GOOD FAITH

Evidence of ill will between landlord and tenant and a desire by the landlord to dispossess the particular tenant is not evidence of bad faith precluding landlord from obtaining possession under provision of Emergency Rent Act giving landlord right of possession if for any reason he is in good faith is willing to discontinue the housing use and occupancy for a continuous period of not less than six months. *Beckwith v. Klein* (D. C. Mun. App. 1952, 93 A. 2d 283).

Provision of Emergency Rent Act permitting landlord to obtain possession of housing accommodation if landlord seeks in good faith to recover possession for immediate purpose of discontinuing housing use and occupancy for a continuous period of not less than six months, was enacted for benefit of landlords and enables a landlord to obtain possession if, for any reason, he is in good faith willing to discontinue housing use and occupancy for required period, with good faith being dependent on his willingness, intention and purpose to discontinue use for required period. *Id.*

"Good faith" in respect of landlord desiring possession of premises in good faith for his own personal occupancy means that the landlord honestly intends to actually occupy the premises and that the occupancy for his own use is his primary motive. *Dant v. Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

In examining question of good faith of landlord seeking possession of house for her own use as dwelling, all circumstances should be considered which will shed light upon whether proper case for possession has been established, and among these circumstances is state of mind, intent and purpose of landlord. *Kelley v. Potomac Development Corp.* (D. C. Mun. App. 1951, 81 A. 2d 81).

Issue of good faith of landlord seeking to recover possession of leased premises for immediate purpose of substantially altering and remodeling property within Rent Law lies particularly within province of triers of fact. *Conrad v. Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

INSPECTION OF PREMISES

Where tenant's possession depends upon Emergency Rent Act, landlord has right to reasonable inspection of premises in order to determine whether remodeling or alteration is desirable or necessary and, if so, what form it will take; and likewise landlord has right to make such repairs as are necessary to protect his property from waste and deterioration and, for such purpose, is entitled to enter premises at reasonable times to inspect and to make repairs. *Dunnington v. Thomas E. Jarrell Co.* (D.C. Mun. App. 1953, 96 A. 2d 274).

The refusal of tenant whose possession depends upon Emergency Rent Act to permit landlord to enter premises at reasonable times to inspect and to make such repairs as are necessary to protect property from waste and deterioration would not constitute a "nuisance" but would be a violation of implied obligation of tenancy. *Dunnington v. Thomas E. Jarrell Co.* (D. C. Mun. App. 1953, 96 A. 2d 274).

LEASE, VALIDITY OF

A landlord cannot by lease or other contract raise the rent ceiling previously established nor avoid the effect of it. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Under statute providing that any building occupied or offered for occupancy by five or more roomers was decontrolled, premises rented or offered for rental by tenant to no more than four persons or roomers were not decontrolled and therefore lease entered into under the mistaken assumption that decontrol had taken place was ineffective. *Jess Fisher & Co. v. Hicks* (D. C. Mun. App. 1952, 86 A. 2d 177).

MINIMUM SERVICE STANDARDS

Under statute assuring a tenant a standard of minimum service and creating a correlative duty to furnish that standard, such duty rested upon landlord and not upon rental collection agent which was not the owner, had no interest in the property, and had not by contract or otherwise undertaken to discharge the duties. *Reyman v. Edward H. Jones & Co.* (D. C. Mun. App. 1953, 96 A. 2d 42).

MOTIVE IN ISSUE

Motive of landlord in seeking possession from tenant not motive of landlord's predecessors in title, is at issue when tenant challenges good faith of landlord in seeking possession for her own use as dwelling, unless there is convincing evidence of collusion or subterfuge. *Kelley v. Potomac Development Corp.* (D. C. Mun. App. 1951, 81 A. 2d 81).

NEW CONSTRUCTION

Congress, in passing District of Columbia Emergency Rent Act, did not intend that an owner could regain possession only when he proposed to erect a new building, and therefore where landlord planned to raze demised building for parking lot project costing about \$8,000, landlord was entitled to possession under such act. *Ancher v. Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

NEW HOUSING ACCOMMODATIONS

A landlord applying for increase of established rent ceiling on ground of increase in operating cost and peculiar circumstances could not for the first time in action for overcharges assert that increase in rent was justified on ground of new housing accommodation. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

NOTICE TO QUIT

Notice to quit was waived by landlord's subsequent continuous acceptance of rent from statutory tenant. *Dunnington v. Thomas E. Jarrell Co.* (D. C. Mun. App. 1953, 96 A. 2d 274).

PERSONS ENTITLED TO SUE

Although caption of complaint designated plaintiff as agent, plaintiff could maintain suit against tenant for possession of demised premises, in view of facts that lease between the parties described lessor in same words, and that during course of trial plaintiff was granted leave to amend to conform with proof to show that plaintiff was not only lessor but also agent of designated principal. *Ancher v. Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

Where testator devised an apartment building in trust to three trustees, including testator's daughter, to manage the apartment building and pay one half of net income to testator's daughter, and after testator's death, daughter and her brother occupied apartments in the building rent free, the daughter could not, in her individual capacity, maintain an action under the rent act against a tenant in possession to recover possession of an apartment on ground that she required it for her personal use for a dwelling, since she was not a "landlord" within meaning of the Rent Act. *Thomas v. Williams* (D. C. Mun. App. 1951, 84 A. 2d 702).

PLEADING

Plaintiff's allegation in complaint to obtain possession of apartment for personal occupancy as a dwelling under Rent Act that defendant held the property as plaintiff's tenant at sufferance, coupled with other allegations, was sufficient to entitle plaintiff to trial on issue whether she was landlord within meaning of the Rent Act. *Williams v. Thomas* (D. C. Mun. App. 1951, 79 A. 2d 783).

POSSESSION, RIGHT TO

Where former tenant entered into a contract for the purchase of an apartment, but contract was void because former tenant thought apartment consisted of two bedrooms, as apartment then existed but landlord intended only to sell one bedroom as part of apartment, party who purchased adjoining apartment, which included disputed bedroom, was entitled to recover its possession for his immediate personal use and occupancy. *Zlotnick v. Crisp et al.* (1950, 87 U. S. App. D. C. 339, 185 F. 2d 502).

PREREQUISITES FOR NEW CEILING

Where rent ceilings for certain apartments had been fixed on an unfurnished basis, and thereafter landlord furnished and rented the apartments at above ceiling rates without having first obtained furnished ceiling rates, landlord was liable under the District of Columbia Emergency Rent Act for the overcharges. *Grady v. Prewitt* (D. C. Mun. App. 1954, 99 A. 2d 755).

PROCEEDING TO RECOVER POSSESSION

Where amount of rent overcharges was more than sufficient to offset the rent due the landlord, the landlord's claim for possession of premises from tenant was properly denied. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Where writ of restitution obtained by landlords against tenant expired, but tenant left the premises because of threats that other writs would be obtained and that she

would be forcibly evicted, eviction did not constitute a wrongful eviction, even though landlords never occupied the property for their immediate and personal use and occupancy as dwelling house, but instead immediately after tenant had vacated, sold it to others. *Smith v. Bozzi* (D. C. Mun. App. 1950, 83 A. 2d 436).

QUESTIONS OF FACT

In tenant's suit against landlords to recover for certain alleged rental overcharges, whether landlords acted in good faith in collecting alleged above ceiling rental was properly submitted to jury. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

When there is substantial evidence challenging good faith of landlord in accepting alleged over ceiling rent, a question of fact is raised for determination by jury or trial court. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

In action by landlord to recover possession of leased premises on ground that he has in good faith contracted to sell property for immediate and personal use and occupancy by purchaser, good faith is usually question of fact and in testing good faith of suing landlord all circumstances should be considered. *Sigmond v. Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

REDRESS, RIGHT OF

The District of Columbia Emergency Rent Act does not provide any civil remedy to a tenant who has been wrongfully dispossessed, and the wrongful ousting of a tenant under this act does not furnish grounds for an action for wrongful eviction, malicious prosecution or abuse of process. *Smith v. Bozzi* (D. C. Mun. App. 1951, 83 A. 2d 436).

REMODELING

In landlord's action under Rent Act to recover leased premises for immediate purpose of substantially altering and remodeling property, where landlord's plans had been filed and approved by commissioners, and he sought to recover possession in good faith, in absence of a showing of complete inability of landlord to remodel under a new order of National Production Authority, his claim for possession could not be defeated on ground that such order would prohibit anticipated construction. *Conrad v. Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

The dismissal of a prior action for possession of housing accommodations under Rent Act brought almost three years before was not res judicata of question of good faith in landlord's present action under the same act. *Williams v. Thomas* (D. C. Mun. App. 1951, 79 A. 2d 783).

RIGHT TO APPEAL

Where tenant did not yield possession voluntarily but was forced to vacate by writ of restitution which issued after judgment for landlord seeking possession, the question of right to possession was not moot and tenant did not lose her right to appeal, as she would have had she yielded possession voluntarily. *Ancher v. Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

SET-OFF

Where amount of rent overcharges was more than sufficient to offset the rent due the landlord, the landlord's claim for possession of premises from tenant was properly denied. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

TERMS OF LEASE

A landlord cannot by lease or other contract raise the rent ceiling previously established nor avoid the effect of it. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

§ 45-1606. Administrator.

There is hereby created in and for the District of Columbia the Office of Administrator of Rent Control. The Administrator shall be appointed by the Commissioners of the District of Columbia and shall be a bona fide resident of the District of Columbia for not less than three years prior to his appointment. He shall devote his full time to the Office of Administrator and shall receive a salary at the rate of \$12,000 per annum. The Administrator shall establish offices, acquire supplies and equipment, and employ such personnel subject to approval by the Commissioners of the District of Columbia, and in accordance with the Classification Act of 1949, without regard to race or creed, as may be necessary in the performance of his functions under this chapter. The Administrator shall submit a semiannual report to the Commissioners of the District of Columbia for transmittal to the Congress of the United States. (As amended June 30, 1951, 65 Stat. 103, ch. 192, § 1.)

AMENDMENTS

1952—The act of May 8, 1952, increased the yearly salary of the Office of Administrator from \$11,200 to \$12,000, effective July 1, 1951.

1951—The act of June 30, 1951, increased the administrator's salary from \$7,500 per annum to \$11,200 per annum and substituted "the Classification Act of 1949" for "the Classification Act of 1923, as amended".

EFFECTIVE DATE OF AMENDMENT OF JUNE 30, 1951

See note under § 45-1601.

TRANSFER OF FUNCTIONS

Reorganization Order No. 44 of the Board of Commissioners dated June 23, 1953 established under the direction and control of a Commissioner, an Office of the Administrator of Rent Control headed by an Administrator. The order abolished the previously existing Office of the Administrator of Rent Control and transferred to the new Office all functions and positions of the old Office of the Administrator of Rent Control, and further provided that all personnel, property, records and unexpended balances relating to the functions and positions transferred were similarly transferred to the new Office of the Administrator of Rent Control. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS**RES JUDICATA**

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

§ 45-1607. Obtaining information.

(a) The Administrator may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as he deems necessary or proper to assist him in prescribing any regulation or order under this chapter, or in the administration and enforcement of this chapter, and regulations and orders thereunder. For such purposes the Administrator may administer oaths and affirmations; may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documents at any designated place; may require persons to permit the inspection and copying of documents, and the inspection of housing accommodations; and may, by regulation or order, require the making and keeping of records and other documents. No person shall be excused from complying with any requirement under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Administrator may make application to the United States District Court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order.

(b) The Administrator shall have authority to promulgate, issue, amend, or rescind rules and regulations, subject to approval by the Commissioners of the District of Columbia, and to issue such orders as may be deemed necessary or proper to carry out the purposes and provisions of this chapter or to prevent the circumvention or evasion thereof. (As amended June 30, 1951, 65 Stat. 103, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, deleted the last three sentences in subsection (b) which provided for the issuance of a license "as a condition of engaging in any rental transaction involving the subletting of any housing accommodations or the renting of housing accommodations in a rooming or boarding house, or in a hotel"; defined "rooming or boarding house"; and provided that there would be no fee charged for such license. The provisions of the license were restricted to those outlined by the chapter and those which could be prescribed by "regulation, order, or requirement thereunder".

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

§ 45-1608. Procedure.

(a) Any petition filed by a landlord or tenant under section 45-1604 shall be promptly referred to an examiner designated by the Administrator. Notice of such action, in such manner as the Administrator shall by regulation prescribe, shall be given the tenant and landlord of the housing accommodations involved. If the petition be frivolous or without merit, the examiner shall forthwith dismiss it. Such order of dismissal may be reviewed by the Administrator in the manner provided in subsection (c) of this section. The examiner shall grant a hearing upon the petition except in cases dismissed under this subsection.

(b) Hearings under this section shall be conducted in accordance with regulations prescribed by the Administrator. The landlord and tenant shall be given an opportunity to be heard or to file written statements, due regard to be given the utility and relevance of the information offered and the need for expedition. In any such hearing the common-law rules of evidence shall not be controlling.

(c) The examiner, after hearing, shall make findings of fact and recommend an appropriate order. Copies of such findings and order shall be served upon the parties to the proceeding in such manner as the Administrator may prescribe by regulation. Within ten days after such service, any such party may request that the recommended order be reviewed by the Administrator. If there be no such request within such ten days, the findings and recommended order of the examiner shall thereupon be deemed to be the findings and order of the Administrator: *Provided*, That the Administrator may review the proceedings, as herein provided, on his own motion at any time within twenty days after service of the examiner's findings and order upon the parties. The Administrator may, in his discretion, grant a hearing upon the request. Upon such request or motion, the record in the case shall be forthwith transferred to the Administrator for review and he may, in his discretion, grant a hearing. He shall state his findings of fact or affirm the examiner's findings of fact, which findings in either

case shall be conclusive if supported by substantial evidence, and shall make an appropriate order. (As amended June 30, 1951, 65 Stat. 104, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, substituted "ten days" in each case where "five days" appeared within subsection (c), and substituted "twenty days" where "ten days" appeared.

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

EVIDENCE

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner did not err in permitting witnesses, who had no independent recollection, to read, from prepared statements, items of expenditures made by landlord. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

FINDINGS OF FACT

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner's findings and recommended orders failed to disclose basic findings of fact with that substantial particularity required by statute. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Rent Administrator's finding of fact, concededly authorized and material to unappealed ruling made by him in proceeding to adjust upward the rent ceilings, could not subsequently be attacked in another proceeding between the same parties. *Aiken v. Cogswell et al.* (1952, 91 U. S. App. D. C. 339, 201 F. 2d 705).

Whether housing accommodations are new ones not rented on critical date under Emergency Rent Act, or are old ones with substantial capital improvements or alterations, is a question of fact, which must be decided by trier of facts unless evidence is compelling one way or the other. *Marcellino v. Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

TIME FOR APPEAL

Where tenants' motions for rehearing by Rent Examiner and for review by Rent Administrator were filed within times permitted by regulations, and petition for judicial review was filed within ten days after Administrator's final order, appeal was timely, notwithstanding fact that more than 20 days had elapsed between entry of examiner's findings and filing of petition for judicial review. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

§ 45-1609. Court review.

(a) Within ten days after issuance of an order of the Administrator under section 45-1604, any party may file a petition to review such action in the Municipal Court of Appeals for the District

of Columbia and shall forthwith serve a copy of such petition upon the Administrator. Thereupon, the Administrator shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, the court shall have exclusive jurisdiction to affirm or set aside such order, or remand the proceeding: *Provided*, That the Administrator may at any time, upon reasonable notice and in such manner as he shall deem proper, rescind, modify, or set aside, in whole or in part, any such order of the Administrator at any time notwithstanding the pendency of the petition to review.

(b) No objection that has not been urged before the Administrator shall be considered by the court unless the failure to urge such objection shall be excused because of extraordinary circumstances. No order shall be set aside or remanded unless the petitioner shall establish to the satisfaction of the court that the order is not in accordance with law, or is not supported by substantial evidence. The commencement of proceedings under this section shall not, except as provided in subsection (d), operate as a stay of the Administrator's order.

(c) The Municipal Court of Appeals for the District of Columbia is hereby granted exclusive jurisdiction to review any order of the Administrator made pursuant to section 45-1604. The judgment and decree of the court shall be final, subject to review as provided by law relative to other judgments of the court.

(d) No court shall issue any interlocutory order or decree staying the effectiveness of any provision of this chapter or any regulation or order issued thereunder unless the person objecting to such provision, regulation, or order shall file with the court an undertaking with a surety or sureties satisfactory to the court for the payment, in the event such objection is not sustained, of the amount by which the maximum rent, if any, permitted under such provision, regulation, or order exceeds or is less than the amount actually received or paid while such stay is in effect. (As amended June 30, 1951, 65 Stat. 104, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, added the words "of the administrator" following the word "order" in the proviso of subsection (a) and deleted the provision re transfer of pending cases to the Municipal Court of Appeals which was enacted when the court was granted exclusive jurisdiction.

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

EVIDENCE, SUFFICIENCY

On appeal from order of Rent Administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments v. Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

FINDINGS OF FACT

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner's findings and recom-

mended orders failed to disclose basic findings of fact with that substantial particularity required by statute. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

INTERVENTION BY ADMINISTRATOR

Rent Administrator, for benefit of all litigants, has right to use every available means, including that of appeal, to insure that his orders and regulations, when promulgated, are made effective. *Cogswell v. Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

RIGHT OF APPEAL

Statutory authority of Municipal Court of Appeals to review orders of Administrator of Rent Control was not applicable to order of Administrator dismissing application of tenants to reopen case in which examiner recommended an order adjusting maximum rent ceiling, which order became final order of Administrator. *Nolan v. Cogswell* (D. C. Mun. App. 1952, 91 A. 2d 832).

TIME FOR APPEAL

Where tenants' motions for rehearing by Rent Examiner and for review by Rent Administrator were filed within times permitted by regulations, and petition for judicial review was filed within ten days after Administrator's final order, appeal was timely, notwithstanding fact that more than 20 days had elapsed between entry of examiner's findings and filing of petition for judicial review. *Reynolds v. Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

§ 45-1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for \$50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the Municipal Court for the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) No person shall be held liable for damages or penalties in any court on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this chapter or any regulation, order, or requirement thereunder, notwithstanding that subsequently such provision, regulation, order, or requirement may be modified, rescinded, or determined to be invalid. The Administrator may intervene in any suit or action wherein a party relies for ground of relief or defense upon this chapter or any regulation, order, or requirement thereunder. No costs shall be assessed against the Administrator in any proceedings had or taken in accordance with this chapter.

(c) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any regulation, order, or requirement thereunder, he may make application to the United States District Court for the District of Columbia for an order enforcing compliance with this chapter or such regulation, order, or requirement, and upon a proper showing a permanent or temporary injunction, restraining order, or other order shall be granted without bond. (As amended June 30, 1951, 65 Stat. 105, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, amended the section by changing the subsection to read (a) (b) and (c) rather than (a) (c) and (d). The original subsection (b) was repealed by the act of April 19, 1949.

EFFECTIVE DATE OF 1951 AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

ADOPTION OF CEILING

A determination of rent ceiling is made when no frozen ceiling exists, and an adjustment is made under Rent Act for cause shown. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

AGENT

Where complaint in action under Rent Act stated only that landlord's rental agent failed to provide minimum service in violation of standards fixed by rent administrator, and neither claimed nor showed any other basis for liability, and neither Rent Act nor lease agreement imposed such duty on agent, under no stated facts which could be proved in support of tenant's claim would tenant be entitled to relief, and summary judgment for agent was properly granted. *Reyman v. Edward H. Jones & Co.* (D. C. Mun. App. 1953, 96 A. 2d 42).

ATTORNEYS' FEES AND COSTS

The District of Columbia Emergency Rent Act contemplates reasonable attorneys' fees in both trial and appellate proceedings, but allowance of such fees must be made by the trial court. *Grady v. Prewitt*. (D. C. Mun. App. 1954, 99 A. 2d 756).

Where landlord sought possession of two apartments and tenants counterclaimed for alleged overcharges of rent and trial court entered judgment for landlord and against tenants but only Rent Administrator appealed and framed the issues on appeal, and Municipal Court of Appeals directed trial court to enter judgment on tenants' counterclaims, allowance of counsel fees to tenants was mandatory but amount of fees was within trial court's discretion. *Cogswell v. Aiken et al.* (D. C. Mun. App. 1951, 83 A. 2d 231).

BAD FAITH

In tenant's suit against landlords to recover for alleged rental overcharges, fact that landlords had, prior to

beginning of tenancy, rented premises to another person at the January 1, 1941, frozen rent ceiling of \$41 a month, was sufficient to raise an inference of lack of good faith on part of landlords when they subsequently collected \$77.50 a month rental. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

BURDEN OF PROOF

In tenants' action to recover double amount of rent overcharges against landlord who had converted accommodations on which rent ceiling had been established into new accommodations and who had made agreement with tenant for increased rentals without filing for new rent ceiling, burden of establishing that property was being used as housing accommodations on freeze date and that such housing accommodations were substantially the same as those to which tenants were entitled when they secured possession of property was improperly placed on tenants. *Fowler v. Stanford* (D. C. Mun. App. 1952, 89 A. 2d 885).

Roomer could not recover against owners of rooming house for penalty provided by Emergency Rent Act for depriving roomer of minimum service standards where roomer did not establish the minimum service standard under any of the tests enumerated in the act. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

CEILING

Where in 1942, rent administrator pursuant to District of Columbia Emergency Rent Act set maximum rent for entire premises, unfurnished, at \$112.50 per month, thereafter, in 1948, administrator established ceiling for upper three floors of premises, furnished, at \$165 per month and for basement apartment, furnished, at \$50 per month and landlord without applying for new ceiling rented entire premises to tenant for \$215 per month, landlord could not add two 1948 ceilings to establish rental for entire building, and 1942 ceiling remained in force. *Boan v. Miller* (D. C. Mun. App. 1954, 99 A. 2d 713).

Under the Rent Act, rental rate of premises, rented on January 1, 1941, became the automatic or frozen ceiling. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

EVIDENCE

Where Municipal Court for District of Columbia in action by tenant against landlord to recover alleged rent overcharge admitted parol evidence of landlord's rent agent that when he made out written form showing ceiling rent he made a mistake, and on appeal Municipal Court of Appeals held that Municipal Court did not err in admitting the parol evidence because written form could be varied by parol testimony as the written form was collateral to fact in issue, and on second trial Municipal Court admitted parol testimony but did not consider parol testimony in making its decision, failure to consider parol testimony was reversible error. *Bryant v. Abramowitz* (D. C. Mun. App. 1953, 96 A. 2d 44).

In landlord's suit for possession of apartment for alleged nonpayment of rent, where tenant filed counterclaim for statutory double damages based on rent overcharges, evidence was not so compelling as to require trial judge to rule that case of new housing accommodations had been made out by landlord as matter of law. *Johnson v. Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

EVIDENCE, ADMISSIBILITY

In tenant's suit for rent overcharges, wherein landlord contended that payments allegedly made in excess of Rent Act were in fact installment payments on purchase of furniture, erroneous admission of self-serving declaration, in form of landlord's income tax return, would require reversal, where there was evidence from which court could have found that transaction was a scheme and device to avoid Rent Act and importance of erroneously admitted evidence was indicated by fact that landlord had persisted in offering it over strenuous objection. *Prowant v. Burke* (D. C. Mun. App. 1952, 90 A. 2d 225).

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and cross-claim by landlord against her agents for breach of agency agreement, evidence offered by agents to show

landlord's lack of good faith was properly excluded, in view of fact that question of good faith was not proper issue. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

In roomer's action against owners of rooming house for penalty provided by Emergency Rent Act for depriving roomer of minimum service standards, and for damages for unlawful eviction, owner's evidence that roomers conduct constituted a nuisance was not properly admitted, though defense of nuisance was not affirmatively pleaded in the answer. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

EVIDENCE, SUFFICIENCY

In suit to recover damages for rental overcharges for premises alleged to have been rented for residential purposes, evidence supported finding that premises had been used and were rented as physician's offices and were not subject to Rent Control Act. *Weinstein v. Rodger Corp.* (1952, 90 A. 2d 827).

In roomer's action against owners of rooming house for penalty provided by Emergency Rent Act for depriving roomer of minimum service standards, evidence on issue of whether repair and renovation of one of three common bathrooms, and whether keeping a window closed with shade drawn to keep out sun's heat, were reasonable or a deprivation of minimum service standards was sufficient to sustain verdict for owners. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

GOOD FAITH

Landlord was not relieved of liability under the District of Columbia Emergency Rent Act for above ceiling rent charges, on ground that landlord acted in good faith, because it obtained from Rent Administrator furnished ceilings on comparable apartments in same building and charged no more than those rates for apartments for which it did not first obtain furnished ceiling rates. *Grady v. Prewitt* (D. C. Mun. App. 1954, 99 A. 2d 756).

In action by tenants against landlord for rent overcharges, good faith of landlord was not in issue, and constituted no defense, in absence of any showing by landlord that in overcharging tenants, he was relying on a rescinded or modified order or regulation of the Administrator. *Jeziorski et al. v. Hollod, Mancini v. Hollod* (D. C. Mun. App. 1954, 106 A. 2d 698).

Where rental agents, who had no actual knowledge of rent ceiling order, collected rental charge over ceiling, but did not rely on any rescinded or modified order or regulation of rent administrator or statutory provision in collecting overcharge, good faith of agents was not in issue upon tenants' attempt to recover double amount of overcharge. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

INTERVENTION BY ADMINISTRATOR

Where landlord sought possession of two apartments for default in rent and tenants counterclaimed for alleged overcharges of rent, Rent Administrator, who intervened in trial court before judgments were entered for landlord and against tenants, could maintain independent appeal. *Aiken v. Cogswell et al.* (1952, 91 U. S. App. D. C. 339, 201 F. 2d 705).

Where trial court permitted intervention by rent administrator without requiring compliance with rule that intervenor shall serve motion to intervene on all parties affected thereby, accompanied by pleading setting forth claim, even though statute of United States gives right to intervene, rent administrator would not be deprived of rights as intervenor because of such procedural defect. *Cogswell v. Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

Rent administrator, for benefit of all litigants, has right to use every available means, including that of appeal, to insure that his orders and regulations, when promulgated, are made effective. *Cogswell v. Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

JUDGMENT

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge, since liability between agents was divided and judgment

was joint and several one, payment of entire judgment by agents would entitle them to complete satisfaction of all judgments entered against them, including judgment recovered by landlord on cross-complaint, and would entitle landlord to complete satisfaction of judgment entered against her. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and cross-claim by landlord against her agents for breach of agency agreement, judgment, which was entered separately against agents and landlord for amount due tenants and which ordered recovery by landlord against agents for amount paid to tenants, did not order contribution. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and upon cross-claim by landlord against her agents for breach of agency agreement, verdict for landlord on cross-claim was not inconsistent with verdict for tenants against landlord and her agents, even though jury found landlord did not act in good faith towards tenants. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

JURISDICTION

Municipal court had jurisdiction of counterclaim of defendant for rent overcharges and violation of minimum service requirements, interposed by tenant in an action brought by plaintiff-landlord for rent and water charges, irrespective of amounts involved in counter claim. *McChesney v. Moore* (D. C. Mun. App. 1951, 78 A. 2d 389).

LIABILITY OF AGENT

In action by tenants against landlord and her rental agents to recover statutory penalty for rent overcharge, upon cross-claim by landlord against her agents for breach of agency agreement, alleged fact that landlord did not act in good faith towards her tenant did not preclude recovery by her against her rental agents. *Shenk v. Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

Real estate agent who signed rental agreement of residential premises, which called for monthly rental in excess of maximum permitted under law, was liable to tenants for monthly overcharge. *Santucci v. Mancuso et al.; Turner v. Mancuso et al.* (D. C. Mun. App. 1951, 78 A. 2d 671).

LIABILITY OF LANDLORD

In an action under the District of Columbia Emergency Rent Act by tenant against landlord to recover rent overcharges, it is immaterial that tenant knew that he was being overcharged, since knowledge of tenant that he pays above ceiling rates does not make the payment legal or estop him to recover for the overcharge. *Grady v. Prewitt* (D. C. Mun. App. 1954, 99 A. 2d 756).

The fact that tenant, as well as landlords, knowingly participated in arrangement for tenant's payment of more than ceiling rent until expiration of Rent Control Act was no defense to tenant's action against landlords for overcharges under such act. *Zeppos v. Lewis* (D. C. Mun. App. 1954, 107 A. 2d 661).

The right to collect for rent overcharges may be pursued against an owner who has actually received excessive rents. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

A landlord which knew amount of rent being collected by its agent from whom tenant leased premises, and which directed agent to collect such amounts was liable for statutory rent overcharges, notwithstanding that for a very brief period the landlord may have been an undisclosed principal. *Id.*

NEW HOUSING ACCOMMODATIONS

A landlord applying for increase of established rent ceiling on ground of increase in operating cost and peculiar circumstances could not for the first time in action for overcharges assert that increase in rent was justified on ground of new housing accommodation. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

NEW TRIAL

In action for possession of premises for nonpayment of rent, wherein defendant counterclaimed for double an alleged overcharge in rent, trial court did not abuse discretion in refusing to grant a continuance of a hearing on a motion for new trial on order that defendant might successfully subpoena a tenant of former owners of involved premises. *Janifer v. Werner* (D. C. Mun. App. 1951, 78 A. 2d 669, reversed on other grounds, 90 U. S. App. D. C. 406, 196 F. 2d 244).

PARTIES

Where, in action in Municipal Court for District of Columbia by first tenant against landlord to recover alleged rent overcharge, it appeared that first tenant and second tenant were cotenants of two apartments during part of time in question since they both had negotiated for renting of apartments and had shared rent, it was error to allow first tenant to recover second tenant's share of alleged overcharge, since such judgment would not preclude second tenant from later maintaining an independent action to recover alleged overcharge. *Bryant v. Abramowitz* (D. C. Mun. App. 1953, 96 A. 2d 44).

Where wife rented premises as a home for her husband and herself, and both husband and wife paid rent, both husband and wife were proper plaintiffs in action for double overcharge of rent, notwithstanding wife alone signed rental agreement. *Santucci v. Mancuso et al.*; *Turner v. Mancuso et al.* (D. C. Mun. App. 1951, 78 A. 2d 671).

PRIMA FACIE CASE

In action by tenant against landlord under Rent Control Act to recover twice amount of alleged rental overcharges, wherein only question involved was whether legal rent at time of freeze date under Emergency Rent Act was \$35 a month, as contended by tenant, or was \$55 a month, as contended by landlord, and wherein tenant's wife testified that landlord admitted to her that former tenant occupied leased premises at monthly rental of \$35, and wherein landlord testified that he did not make admission claimed by tenant's wife, court erred in ruling that tenant had not made out a prima facie case, and erred in granting landlord's motion for directed verdict. *Petty v. Rowe* (D. C. Mun. App. 1952, 91 A. 2d 331).

QUESTIONS OF FACT

Whether landlord sued for statutory rent overcharges created new housing accommodations which rendered inapplicable any pre-existing rent ceiling, by changing heating system, removing kitchen to another part of house, sealing off basement to tenant and subsequently re-decorating, was a question for the trier of facts. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Implicit in rental formula for units rented on January 1, 1941, but improved so as to constitute new housing accommodations, under Act providing that maximum rent ceiling for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations and determined by Administrator, is need for factual determination by Administrator, after application by landlord, as to rent and service generally prevailing for comparable housing accommodations. *Janifer et al. v. Werner* (1952, 90 U. S. App. D. C. 406, 196 F. 2d 244, reversing 78 A. 2d 669).

In tenant's suit for rent overcharges, under conflicting evidence as to amount of rental charged on statutory freeze date, trial court did not err in granting relief sought. *Morski v. Murphy* (D. C. Mun. App. 1951, 85 A. 2d 806).

In action against owners of rooming house for penalty provided by Emergency Rent Act for depriving plaintiff of minimum service standards, and for damages for unlawful eviction, question of whether plaintiff was a roomer which would give landlords right to reasonable entry into plaintiff's room, or a tenant, was properly submitted to jury. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

In tenant's suit against landlords to recover for certain alleged rental overcharges, whether landlords acted in

good faith in collecting alleged above ceiling rental was properly submitted to jury. *Parker v. Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

In action for statutory double damages based on rent overcharges, question as to whether housing accommodations involved are new ones not rented on critical date or are old ones with substantial capital improvements or alterations is question of fact which must, unless evidence is compelling one way or other, be decided by jury. *Johnson v. Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

QUESTION FOR TRIAL COURT

In an action for rental overcharges under Emergency Rent Act, resolution of sharply conflicting testimony as to type of housing accommodations rented was for trial court. *Roscoe L. Jones v. Esther Clark et al.* (D. C. Mun. App. 1955, 112 A. 2d 500).

REFUSAL TO SUPPLY SERVICE

Under statute giving tenant entitled to a minimum service standard right of action against landlord for double value of "services refused" in violation of applicable minimum service standard, a refusal need not be explicit, and a repeated failure to perform a duty may be equivalent to a refusal. *Lupin v. G. M. P. Corp.* (D. C. Mun. App. 1951, 83 A. 2d 323).

Where inside repairs were included within the minimum service required to be maintained by landlord, existence of water leak in shower stall for over six months after notice of leak and failure to repair leak was tantamount to a refusal to do so, and tenant was entitled to an award under the Emergency Rent Act. *Lupin v. G. M. P. Corp.* (D. C. Mun. App. 1951, 83 A. 2d 323).

RES JUDICATA

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Winifred Usher v. 1015 N. Street, N. W. Cooperative Association, et al.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

REVIEW

Where landlord sought possession of two apartments for default in rent and tenants counterclaimed for alleged overcharges of rent and trial court entered judgment for landlord and against tenants but tenants did not appeal, Rent Administrator, who had intervened in suits but was not party to judgments, could maintain independent appeal. *Cogswell v. Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

RIGHT OF ENTRY

While a roomer as well as a tenant is entitled to protection of Emergency Rent Act, distinctions between the two relationships with respect to right of landlords to reasonable entry still exist. *Lindsey v. Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

SET OFF

Where rent ceilings for certain apartments had been fixed on an unfurnished basis, and thereafter landlord furnished and rented the apartments at above ceiling rates without having first obtained furnished ceiling rates, and tenants brought actions against landlord under the District of Columbia Emergency Rent Act to recover overcharges, landlord was not entitled to set off against

tenants' claims a fair rental for use of furniture, since to allow landlord to collect additional amount for use of furniture would constitute an evasion of the act. *Grady v. Prewitt* (D. C. Mun. App. 1954, 99 A. 2d 756).

STIPULATIONS AS TO EVIDENCE

In landlord's suit for possession of apartment for alleged nonpayment of rents, where tenant filed counterclaim for statutory double damages based on rent overcharges, stipulation by landlord's counsel in open court, to effect that if check dated during month of August, 1950, endorsed by landlord in sum of \$70 was presented to court such check should be entered in evidence and allowed as proof of payment of August 1950 rent, was binding upon landlord, and landlord would not be entitled to credit for nonpayment of rent for such month after such check had been introduced in evidence. *Johnson v. Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

WAIVER OF OBJECTIONS

In suit by landlord to recover possession of apartment for non-payment of rent, where tenant counterclaimed for statutory double damages based on rent overcharges, landlord waived objections to counterclaim by not making timely challenge in trial court, and his challenge of counterclaim for first time on motion for new trial was too late. *Johnson v. Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

§ 45-1611. Definitions.

As used in this chapter—

(a) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia, together with all services supplied in connection with the use or occupancy of such property; but the term "housing accommodations" shall not include (1) any of the accommodations in a hotel in which more than 60 per centum of the units devoted to living quarters for tenants and guests are used for furnishing accommodations for transients, or the building constituting such hotel; or (2) furnished non-housekeeping accommodations, whether or not in a hotel, which are rented as rooms without kitchen privileges or facilities for cooking (but not in a suite of two or more rooms); or (3) any building used as a licensed rooming house.

(b) The term "services" includes the furnishing of light, heat, hot and cold water, telephone, elevator service, furnishings, furniture, window shades, screens, awnings, and storage; kitchen, bath, and laundry facilities and privileges; maid service; janitor service; the removal of refuse, and the making of all repairs suited to the housing accommodations or necessitated by ordinary wear and tear; and any other privilege or facility connected with the use or occupancy of housing accommodations.

(c) The term "rent" means the consideration, including any bonus benefit, or gratuity, demanded or received per day, week, month, year, or other period of time, as the case may be, for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations

(d) The term "maximum-rent ceiling" means the maximum rent which may be demanded or received for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(e) The term "minimum-service standard" means the minimum service which may be supplied in connection with the renting or leasing of housing accommodations.

(f) The term "tenant" includes a subtenant, lessee, sublessee, or other person entitled to the use or occupancy of any housing accommodations.

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations, and any agent, trustee, receiver, assignee or other representative thereof.

(i) The term "documents" includes leases, agreements, records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of the foregoing. (As amended June 30, 1951, 65 Stat. 106, ch. 192, § 1.)

AMENDMENTS

1951—The act of June 30, 1951, amended subsection (a) generally.

EFFECTIVE DATE OF AMENDMENT

See note under § 45-1601.

NOTES TO DECISIONS

ACCOMMODATIONS SUBJECT TO CONTROL

The 1950 amendatory rent control act decontrolling nonhousekeeping housing accommodations rented as rooms and buildings used as rooming houses containing decontrolled housing accommodations, and 1951 act decontrolling furnished nonhousekeeping accommodations and buildings used as licensed rooming houses, decontrolled rooming houses including establishments classified as lodging houses for certain purposes, so that a leased building, known as hotel, but operating under lodging house license, containing nonhousekeeping furnished rooms, and accommodating both transient and permanent guests, was not subject to rent control after effective date of first of such acts. *Zeppos et al. v. Lewis* (D. C. Mun. App. 1954, 107 A. 2d 661).

ACTUAL USE

It is the actual use of premises, together with landlord's knowledge of or acquiescence in such use, that determines whether or not the decontrol provisions of the Rent Act apply. *Kelley v. Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

Under Rent Control Act, the use of the premises as housing accommodations determines whether Act is to apply. *Weinstein v. Rodger Corp.* (D. C. Mun. App. 1952, 90 A. 2d 827)

BURDEN OF PROOF

The burden rests on landlord to prove that building is within a decontrolled exception to the Rent Act. *Kelley v. Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

Landlords suing for possession of leased housing accommodations as not subject to District of Columbia Rent Control Act have burden of proving that building involved is within decontrolled exception of such Act. *Bernstein v. Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

CHARGES FOR MEALS

An increase in charge for room and board, representing increase in charge for meals alone, would not violate District of Columbia Emergency Rent Law and court properly so instructed jury in action for overcharge. *Barnabo v. Lewis* (D. C. Mun. App. 1951, 81 A. 2d 659).

CLASSIFICATION OF PROPERTY

Under Rent Control Act, whether property is commercial or residential and controlled, is ordinarily a question of fact to be determined by giving due weight to whether

premises have been used for commercial or residential purposes, to prior leases, acts of parties, and time over which landlord-tenant relationship has existed, to whether a commercial portion is incidental to dwelling portion or whether property is primarily commercial with dwelling accommodation incident thereto, and whether the two portions can be and have been used independently of each other. *Weinstein v. Rodger Corp.* (D. C. Mun. App. 1952, 90 A. 2d 827).

CONSTRUCTION

Exemptions from operation of District of Columbia Rent Control Act must be narrowly construed, giving due regard to plain meaning of language thereof and Congress' intent. *Bernstein v. Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

The clause of District of Columbia Rent Control Act, excluding furnished nonhousekeeping accommodations rented as rooms without kitchen privileges from definition of term "housing accommodations" subject to control, eliminated rent ceilings on rooms rented without such privileges in a building, though building itself was not being used as rooming house, but did not decontrol entire building, while clause excluding any building used as licensed rooming house from such definition removed entire building so used from control. *Bernstein v. Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

EVIDENCE, SUFFICIENCY

In suit to recover damages for rental overcharges for premises alleged to have been rented for residential purposes, evidence supported finding that premises had been used and were rented as physician's offices and were not subject to Rent Control Act. *Weinstein v. Rodger Corp.* (D. C. Mun. App. 1952, 90 A. 2d 827).

GROUPING OF ACCOMMODATIONS

Grouping of two housing accommodations, consisting of furnished basement and upper floors of house, as subject matter of one lease to single tenant, did not destroy character of two separate parts of house or create new housing accommodation, so that monthly rent ceiling fixed for entire building while unfurnished, was not only rent ceiling for whole premises and higher monthly rent in combined amount of ceilings subsequently fixed for basement and combined upper floors, respectively, was not illegal overcharge. *Miller v. Boan* (1955, 95 U. S. App. D. C. 43, 218 F. 2d 854).

HOUSING ACCOMMODATIONS

Under statute providing that any building occupied or offered for occupancy by five or more roomers was decontrolled, premises rented or offered for rental by tenant to no more than four persons or roomers were not decontrolled and therefore lease entered into under the mistaken assumption that decontrol had taken place was ineffective. *Jess Fisher & Co. v. Hicks* (D. C. Mun. App. 1952, 86 A. 2d 177).

HOUSING ACCOMMODATIONS DEFINED

The term "housing accommodations" in District of Columbia Emergency Rent Act means composite of rented realty, personal property, and appurtenances thereto and services connected therewith. *Miller v. Boan* (1955, 95 U. S. App. D. C. 43, 218 F. 2d 854).

LANDLORD

Where testator devised an apartment building in trust to three trustees, including testator's daughter, to manage the apartment building and pay one half of net income to testator's daughter, and after testator's death, daughter and her brother occupied apartments in the building rent free, the daughter could not, in her individual capacity, maintain an action under the rent act against a tenant in possession to recover possession of an apartment on ground that she required it for her personal use for a dwelling, since she was not a "landlord" within meaning of the Rent Act. *Thomas v. Williams* (D. C. Mun. App. 1951, 84 A. 2d 702).

LICENSED ROOMING HOUSE

Where lease provided that tenant was to operate leased property as licensed rooming house, and any building used as licensed rooming house was exempt from Rent Act, tenant paying \$100 monthly instead of \$50 monthly rent in force on freeze date could not recover overcharges in absence of evidence as to whether property was being put to any different use than that prescribed in lease. *Kelley v. Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

QUESTION OF FACT

In tenant's action for overcharges by lessor furnishing room and board, whether increase in rent related to meals alone, so as to preclude recovery, was for jury under conflicting testimony. *Barnabo v. Lewis* (D. C. Mun. App. 1951, 81 A. 2d 659).

RIGHT TO POSSESSION

Entry of judgment for tenant in landlord's action against tenant for a non-payment of rent was wrong where defendant had admittedly paid no rent for a particular month. *Kelley v. Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

ROOMING HOUSE

In landlords' action for possession of leased housing accommodations, alleged to be a licensed rooming house excluded from rent control by statute, trial court properly instructed jury that plaintiffs must prove not only that building involved was licensed rooming house, but also show that it was used as such. *Bernstein v. Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

A building leased to one who rented rooms therein with housekeeping privileges to persons given exclusive control thereof was not a rooming house, exempt from operation of District of Columbia Rent Control Act, though license permitting its use as such was issued; housing accommodations being under exclusive control of occupants. *Bernstein v. Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

SERVICES

Meals furnished by lessor are not "services" within contemplation of District of Columbia Emergency Rent Act and are not subject thereto. *Barnabo v. Lewis* (D. C. Mun. App. 1951, 81 A. 2d 659).

UNDISCLOSED PRINCIPAL

A landlord which knew amount of rent being collected by its agent from whom tenant leased premises, and which directed agent to collect such amounts was liable for statutory rent overcharges, notwithstanding that for a very brief period the landlord may have been an undisclosed principal. *Morning Star Lodge No. 40 v. Harris* (D. C. Mun. App. 1952, 93 A. 2d 288).

Chapter 17.—SERVICEMEN'S READJUSTMENT

§ 45-1701. Disability of Minority removed—Investment by building associations.

TRANSFER OF FUNCTIONS

Reorganization Order No. 32 of the Board of Commissioners dated April 30, 1953 established under the direction and control of the Engineer Commissioner, a Veterans' Service Center headed by a Director. The new Veterans' Service Center is to perform the functions previously assigned to the Division of Services to Veterans (including the previously existing D. C. Veterans' Service Center). The order abolished the previously existing Division of Services to Veterans (including the previously existing D. C. Veterans' Service Center). This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 45-1702. Direct-reduction loans authorized.

CROSS REFERENCE

See note under section 45-1701 concerning the Veterans' Service Center.

TITLE 46.—SOCIAL SECURITY

Chapter 3.—UNEMPLOYMENT COMPENSATION

Sec.

46-326. Commissioners of the District of Columbia.

§ 46-301 [8:311]. Definitions.

As used in this chapter, unless the context indicates otherwise—

(a) The term “employer” means every individual and type of organization for whom services are performed in employment;

(b) (1) “Employment” means any service performed prior to the effective date of this chapter which was employment as defined in this chapter prior to such date, and subject to the other provisions of this subsection, service performed on and after the effective date of this chapter, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) The term “employment” shall include an individual’s entire service, performed within or both within and without the District if—

(A) the service is localized in the District; or

(B) the service is not localized in any State but some of the service is performed in the District and (i) the individual’s base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in the District; or (ii) the individual’s base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed but the individual’s residence is in the District.

Service shall be deemed to be localized within a State if—

(i) the service is performed entirely within such State; or

(ii) the service is performed both within and without such State, but the service performed without such State is incidental to the individual’s service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Services covered by an arrangement pursuant to section 46-316 between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law, pursuant to which all services performed by an individual for an employer are deemed to be performed entirely within the District, shall be deemed to be employment if the Board has approved an election of the employer for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment for an employer.

(4) Notwithstanding any other provisions of this subsection, the term employment shall also include all service performed after January 1, 1955 by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within the District.

(5) The term “employment” shall not include—

* * * * *

(Q) service performed on or in connection with a vessel not an American vessel by an individual if he performed service on and in connection with such vessel when outside the United States;

(R) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(S) service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters.

(6) INCLUDED AND EXCLUDED SERVICE.—If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term “pay period” means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay

period by an individual in employment for the person employing him, where any of such service is excepted by paragraph 5 (H) of subsection (b).

(7) Notwithstanding any of the provisions of subsection 1 (b) (5) of this section, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any Federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment compensation fund.

(8) (i) Any service performed for an employing unit, which is excluded under the definition of employment in section 1 (b) (5) and with respect to which no payments are required under the employment security law of another State or of the Federal Government may be deemed to constitute employment for all purposes of chapter: *Provided*, That the Board has approved a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in such approval. No election shall be approved by the Board unless it (A) includes all the service of the type specified in each establishment or place of business for which the election is made, and (B) is made for not less than two calendar years.

(ii) Any service which, because of an election by an employing unit under section 1 (b) (8) (i), is employment subject to this chapter shall cease to be employment subject to the chapter as of January 1 of any calendar year subsequent to the two calendar years of the election, only if not later than March 15 of such year, either such employing unit has filed with the Board a written notice to that effect, or the Board on its own motion has given notice of termination of such coverage.

(iii) Notwithstanding the provisions of subsection 1 (b) (2) of this section, service performed in the employ of the municipal government of the District of Columbia but not localized within the District may, if said government elects, be covered employment.

(c) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the Board, except that such term "wages" shall not include—

(1) the amount of any payment with respect to services performed on and after the effective date of this chapter, made to, or on behalf of, an individual in its employ under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account

of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization, expenses in connection with sickness or accident disability, or (D) death, provided such individual (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(2) the payment by an employer (without deduction from the remuneration of the individual in employment) (A) of the tax imposed upon an individual in its employ under section 1400 of the Internal Revenue Code (26 U. S. C.); or

(3) dismissal payments on and after the effective date of this chapter, which the employer is not legally required to make.

* * * * *

(h) "Benefit year" with respect to any individual means the fifty-two consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the fifty-two consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 46-311 shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers as required by the provisions of section 46-307.

* * * * *

(m) "Employment office" means a free public employment office or branch thereof operated by this or any other State as a part of a State-controlled system of public employment offices or by a Federal agency or any agency of a foreign government charged with the administration of an unemployment-insurance program or free public employment offices.

* * * * *

(t) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(u) The term "principal base period employer" means the employer that paid a claimant the greatest amount of wages used in the computation of

his claim. In the event two or more employers paid the claimant identical amounts, the employer in such group for whom the claimant most recently worked shall be the principal base period employer. (Aug. 28, 1935, 49 Stat. 946, ch. 794, § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14; Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, § 1; June 4, 1943, 57 Stat. 100, ch. 117; Aug. 31, 1954, 68 Stat. 988, ch. 1139, § 1; July 25, 1956, 70 Stat. 643, ch. 724, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1 (b) (5).)

AMENDMENTS

1958—Section 1 (b) (5) of the act of July 25, 1958, cited to text, amends subsection (b) (5) by adding paragraph (S) thereto.

1956—Section 1 of the act of July 25, 1956, cited to text, amended the section by adding the matter designated as "iii" to subsection (b) (8).

1954—The act of August 31, 1954, amended section 46-301 (b) (2) (B) by adding the provisions relating to localized service formerly found in old section 46-301 (b) (4).

The act amended section 46-301 (b) (4) concerning service aboard certain vessels. Section 46-301 (b) (5) was amended by the addition by subsections (Q) and (R), and new subsections (7) and (8) were added to section 46-301 (b).

The definitions of "Benefit year" (subsection (h)) and "Employment office" (subsection (m)) were amended and subsections (t) defining "American vessel", and (u) defining "principal base period employer" were added to the section.

Subsection (c) was amended by eliminating former paragraph (1) and by renumbering the remaining paragraphs.

The amendments were made effective on January 1, 1955 by section 3 of the act of August 31, 1954.

EFFECTIVE DATE OF AMENDMENT

1958—Section 2 of the act of July 25, 1958, cited to text, makes the amendment of this section retroactive to January 1, 1936, with the proviso that no refund may be made because of such retroactive provision.

1956—Section 2 of the act of July 25, 1956, cited to text, states that the act "shall take effect as of 12:01 ante-meridian on the first day of the next succeeding calendar quarter following the enactment of this amendatory Act."

TRANSITION PROVISIONS

The act of August 31, 1954, contained the following provisions concerning the determination of benefits after the effective date of that act:

"TRANSITION PROVISIONS"

"SEC. 2. (a) As used in this section, unless the context clearly requires otherwise—

(1) 'old law' means the unemployment compensation law prior to its amendment by this Act;

(2) 'new law' means the unemployment compensation law as amended by this Act; and

(3) 'effective date' means the date upon which the new law becomes effective.

(b) The benefit rights of any individual having a benefit year current on or after the effective date shall be redetermined and benefits for calendar weeks ending subsequent to the effective date shall be paid in accordance with the new law: *Provided*, That no claimant shall have his benefits reduced or denied by redetermination resulting from the application of this provision. All initial and continued claims for benefits for weeks occurring within a benefit year which commences on or after the effective date shall be computed and paid in accordance with the new law."

NOTES TO DECISIONS

NAVY CLUB BARBER

Where defendant operated a barber shop under a contract with a navy club and had complete responsibility for employment and payment of assistants and the club received ten percent of the gross income and defendant retained the balance, defendant was an "employer" within the District of Columbia Unemployment Compensation Act and liable for contributions thereunder. *M. Sokol t/a etc. v. R. E. McLaughlin et al.* (D.C. Mun. App. 1959, 147 A. 2d 766).

§ 46-303 [8:313]. Employer contributions.

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

(1) The Board shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939. Each year the Board shall credit to each of such accounts having a positive reserve on the computation date, the interest earned by such accounts from the Federal Government. This shall be done by averaging the interest rate paid for the four quarters ending on the computation date and crediting to each such account the amount which the reserve on such computation date would earn at such average rate of interest.

(2) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers. The principal base period employer shall be notified of each payment of benefits to a claimant at the time of such payment.

(7) (a) If 25 per centum or more of the business of any employer is transferred, the transferee shall be determined a successor for the purposes of this section.

(i) If the Board is unable to get information upon which to determine whether or not 25 per centum of the business has been transferred, it may, in its discretion, make such determination based upon the quarterly payrolls of the employers involved for the last complete calendar quarter prior to the transfer and the first complete calendar quarter after such transfer.

(ii) In the event of a transfer of 25 per centum or more of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the Board, on its own motion or on application of an

interested party, finds that all of the following conditions exist:

(1) The transferee has not assumed any of the transferor's obligations;

(2) The transferee has not continued or resumed transferor's goodwill;

(3) The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

(4) The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(b) The successor, if not already subject to this section, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(c) The successor shall take over and continue the employer's account, including its reserve and all other aspects of its experience under this section, in proportion to the payroll assignable to the transferred business as determined for the purposes of this section by the Board. However, his successor shall take over only the reserve actually credited to the account of the transferor or for which the transferor has filed a claim with the Board at the date of transfer. The successor shall be secondarily liable for any amounts owed by the employer to the fund at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(d) The benefit chargeability of a successor's account under section 3 (c), if not accrued before the transfer date, shall begin to accrue on the transfer date in case the transferor's benefit chargeability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit chargeability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not chargeable before the transfer date, shall become chargeable on the transfer date, in case the transferor was then chargeable for benefit payments; or shall become chargeable on the date otherwise applicable to the successor or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was chargeable for benefit payments on the transfer date.

(e) The account taken over by the successor employer shall remain chargeable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(f) Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of transfer, his rate of contributions the remainder of the calendar year shall be his rate with respect to the period immediately preceding his date of acquisition. If the successor was not an employer prior

to the date of transfer, his rate shall be the rate applicable to the transferor or transferors with respect to the period immediately preceding the date of transfer: *Provided*, That there was only one transferor or there were only transferors with identical rates; if the transferor rates were not identical, the successor's rate shall be the highest rate applicable to any of the transferors with respect to the period immediately preceding the date of transfer. The rate of the transferor, if still subject to the chapter, will not be redetermined and shall remain the rate with respect to the period immediately preceding the date of transfer.

For future years, for the purposes of section 46-303 (c), the Board shall determine the "experience under this section" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's payroll, contributions, and the benefit charges which the Board determines to be properly assignable to the business transferred.

(g) Repealed.

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

(i) If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

(A) 2.7 per centum if such reserve is less than 0.9 per centum of his average annual payroll;

(B) 2 per centum if such reserve equals or exceeds 0.9 per centum but is less than 1.4 per centum of his average annual payroll;

(C) 1.5 per centum if such reserve equals or exceeds 1.4 per centum but is less than 1.9 per centum of his average annual payroll;

(D) 1 per centum if such reserve equals or exceeds 1.9 per centum but is less than 2.9 per centum of his average annual payroll;

(E) 0.5 per centum if such reserve equals or exceeds 2.9 per centum but is less than 3.4 per centum of his average annual payroll;

(F) 0.1 per centum if such reserve equals or exceeds 3.4 per centum of his average annual payroll.

* * * * *

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within thirty days after the

delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46-311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the Board's denial of his application or of the Board's redetermination, both of which shall become final unless, within thirty days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, a petition for judicial review is filed in the District Court of the United States for the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46-312 and under section 36-501. An appeal may be taken from the decision of the District Court of the United States for the District of Columbia to the United States Court of Appeals for the District of Columbia in the same manner as is provided in other civil cases.

(d) The contributions payable pursuant to subsections (b) and (c) of this section shall become due and be paid by each employer to the Board in accordance with such regulations as the Board may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(e) From December 31, 1939, to January 1, 1955, wages, for the purpose of section 46-303, shall not include any amount in excess of \$3,000 paid by an employer to any person arising out of his or her employment during any calendar year. After December 31, 1954, wages shall not include any amount in excess of \$3,000 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U. S. C. 1600, 1607), whichever is greater) actually paid by an employer to any person during any calendar year. After December 31, 1954, the term "employment" for

the purpose of this subsection shall include services constituting employment under any employment security law of another State or of the Federal Government.

(f) In the event the District of Columbia should elect to cover employees under this chapter under the provisions of section 46-301 (b) (8) (i) in lieu of contributions required of employers under this chapter, the District of Columbia shall pay into the fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the District. If benefits paid an individual are based on wages paid by both the District of Columbia and one or more other employers, the amount payable by the District to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the District of Columbia bears to the total amount of the base-period wages paid to the individual by all of his base-period employers.

The amount of payment required under this section shall be ascertained by the Board quarterly and shall be paid from the general funds of the District at such time and in such manner as the Commissioners of the District of Columbia may prescribe except that to the extent that benefits are paid on wages paid by the District from special administrative funds, the payment by the District into the unemployment fund shall be made from such special funds.

(g) Contributions due under this chapter with respect to wages for insured work shall, for the purpose of this section, be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal employment security law if payment into the fund of such contributions is made on such terms as the director finds will be fair and reasonable as to all affected interests. Payments to the fund under this subsection shall be deemed to be contributions for purposes of section 46-303. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; June 2, 1940, 54 Stat. 731, ch. 524, § 1; Nov. 21, 1941, 55 Stat. 781, ch. 500, § 1; Nov. 9, 1942, 56 Stat. 1016, ch. 636; June 4, 1943, 57 Stat. 105, ch. 117; July 11, 1946, 60 Stat. 527, ch. 557; July 26, 1947, 61 Stat. 494, ch. 342, § 1, 2; Aug. 31, 1954, 68 Stat. 989, ch. 1139, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended section 46-303 (c) (1) by the addition of a sentence provided for the crediting of interest earned by the fund to the reserve accounts of certain employers.

Section 46-303 (c) (2) was amended to provide for notification to each claimant's principal base period employer of each payment of benefits to the claimant.

Section 46-303 (c) (7) (a) was amended to provide for the transfer of experience from one employer to another in case of partial transfer, if only as much as 25% of the business is transferred.

Section 46-303 (c) (7) (c) was amended to provide that a successor will take over only the reserve actually credited to the account of the transferor, or for which the transferor has filed a claim at the date of transfer.

A comma was eliminated from section 46-303 (c) (7) (d) following the word "date" in the first sentence.

Section 303 (c) (7) (f) was revised by the amendatory act which amended the provisions concerning the rates applicable to successor employers.

Former section 46-303 (c) (7) (g) was repealed by the act.

Section 46-303 (c) (8) (1) was changed to provide the reserve requirements for a reduced rate in each rate step be reduced by one-tenth of 1 percent.

Section 46-303 (c) (10) was amended by substituting the word "thirty" for "fifteen" in the second and seventh sentences.

The section was further amended by the addition of subsections (e), (f) and (g).

NOTES TO DECISIONS

DETERMINATION OF RATE OF COMPENSATION

The Unemployment Compensation Board's determination of employers' rate of unemployment compensation contributions for 1945 through 1947 became conclusive and binding on employers fifteen days after issuance of determination in absence of application by employers within such time for review and redetermination of rate by Board. *Spencer v. Lampros* (1954, 94 U. S. App. D. C. 397, 216 F. 2d 462).

EFFECT OF DISSOLUTION UNDER PRIOR LAW

Dissolution of corporation and acquisition of its business by purchasers of its stock as partners constituted "reorganization effecting a change in legal identity or form" within Unemployment Compensation Act, so as to require partners to request transfer to them of corporation's experience within time specified in Act to be entitled to credit therefor and lower rate of unemployment compensation contributions than for new employers. *Spencer v. Lampros* (1954, 94 U. S. App. D. C. 397, 216 F. 2d 462).

§ 46-304. Method of paying employer contributions.

(b) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Board may by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to, wages paid during such quarter with respect to employment. Wages unpaid solely because of a court order appointing a fiduciary shall be deemed constructively paid when due. Each such return shall be filed with the Board, and shall contain such information and be made in such manner as the Board may by regulation prescribe. No extension of time for filing the return or for payment of the contributions shall be allowed to any employer, except as herein provided.

(c) (1) If contributions are not paid when due, there shall be added, as part of the contributions, interest at the rate of one-half of 1 per centum per month or fraction thereof from the date the contributions became due until paid: *Provided*, That interest shall not run against a court appointed fiduciary when the contributions are not paid timely because of a court order.

(2) If contributions or wage reports are not filed on or before the fifteenth day of the second month following the close of the calendar quarter for which they are due or contributions are not paid by that time, there shall be added as part of the contributions a penalty of 10 per centum of the contributions but such penalty shall not be less than \$5 nor more than \$25 and for good cause such penalty may be waived by the Board with the approval of the Commissioners of the District of Columbia.

(d) In the event of the death, dissolution, insolvency, receivership, bankruptcy, composition, or assignment for benefit of creditors of any employer, contributions then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the District, and wages (not exceeding \$600 with respect to any individual) due for services performed within the three months preceding such event.

(h) Collections.—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by the Board or its designated agent in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection (including collection thereof by distraint), or by civil action in the name of the Board, and the employer adjudged in default shall pay the costs of such action.

(j) The Board in its discretion, whenever it may deem it administratively advisable, may charge off of its books any unpaid account due the Board or any credit due an employer who has been out of business for a period of more than three years. Whenever an account is charged off by the Board, there shall be placed in the minutes of the Board a reason for such action.

(l) The Board, with the approval of the corporation counsel and the District auditor, may compromise any civil case arising under this chapter. Whenever a compromise is made by the Board in each such case, there shall be placed in the minutes of the Board the opinion of an attorney of the Board with the reasons therefor, including a statement of (1) the amount of the contributions due, (2) the amount of interest due on such contributions, and (3) the amount actually paid in accordance with the terms of the compromise.

There is hereby established in the Treasury of the United States a special escrow account into which the Board shall deposit all funds received in connection with an offer of compromise. Such funds shall be kept in such escrow account until final action is had upon the offer of compromise and shall not be subject to offset for any indebtedness whatsoever. In the event the compromise is approved, the funds shall be transferred to the District Unemployment Compensation Funds. In the event the compromise is disapproved, the funds shall be immediately returned to the individual who made the offer of compromise. (Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; June 2, 1940, 54 Stat. 731, ch. 524, § 1; June 4, 1943, 57 Stat. 108, ch. 117; July 10, 1952, 66 Stat. 543, 547, ch. 649, § 2 (b), 6; Aug. 31, 1954, 68 Stat. 992, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1 (4 (b) (c)).)

AMENDMENTS

1958—Section 1 (4 (b)) of the act of July 25, 1958, cited to text, amended subsection (b) by adding the new sentence which follows the first sentence beginning with the word "Wages" and ending with "due".

Section 1 (4 (c)) of the same act amended subsection (c) to read as above set out.

1954—The act of August 31, 1954, amended the section to provide in subsection (c) (2) to provide for a penalty of 10 per cent as there limited, and to provide for waiver. Subsection (d) was amended by the addition of the word "death."

Subsection (j) was changed to eliminate obsolete provisions 1 and to grant the Board authority to write off uncollectible accounts.

Subsection (l) was amended by the addition of four sentences relating to the escrow account for use in connection with offers of compromise.

1952—The act of July 10, 1952, substituted "one half of 1 per centum" for "1 per centum" in subsection (c). Subsection (h) was amended generally.

EFFECTIVE DATE OF AMENDMENT

1958—Section 2 of the act of July 25, 1958, cited to text, makes the amendments to subsections (b) and (c) effective on the first day of the next succeeding calendar quarter following the enactment of the act.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 8 of the 1952 act provided that the effective date of the amendment to subsection (c) would be July 1, 1952. The effective date of the amendment to subsection (h) is July 10, 1952, the date of enactment.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The functions of auditing all monies paid to and collected by the District Unemployment Board as provided in subsection (a) of section 46-304, and the function of approving compromises by the District Unemployment Compensation Board of any civil case as provided in subsection (l) were transferred from the Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. The function of the Auditor of the District concerning the prior audit of refunds under subsection (i) of section 46-304 were transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company v. R. E. McLaughlin et al., etc.* (D.C. Mun. App. 1959, 151 A. 2d 535)

§ 46-307 [8:318]. Amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the benefit account of the District unemployment fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b) Except as provided in section 46-307 (c), an individual's weekly benefit amount shall be the amount in column (B) of the table in this subsection on the line on which, in column (A), there appears his total wages for employment paid to such indi-

vidual by employers during that quarter of his base period in which such wages were the highest.

(c) To qualify for benefits an individual must have been paid wages for employment in his base period totaling not less than the amount in column (C) of the table in section 46-307 (b) on the line on which, in column (B), there appears his weekly benefit amount, and such wages must have been in at least two calendar quarters in his base period: *Provided*, That if an individual during his base period has not been paid such an amount, but has been paid wages in more than one calendar quarter totaling not less than the amount appearing on one of the lines in column (C) above, he can qualify for benefits and his weekly benefit amount shall be the amount appearing in column (B) on the line for which the individual qualifies for benefits in column (C).

TABLE A

High-quarter wages (col. A)	Basic weekly benefit (col. B)	Minimum qualifying wages (col. C)
\$130.00 to \$184	\$8	\$276
\$184.01 to \$207	9	310
\$207.01 to \$230	10	345
\$230.01 to \$253	11	379
\$253.01 to \$276	12	414
\$276.01 to \$299	13	448
\$299.01 to \$322	14	483
\$322.01 to \$345	15	517
\$345.01 to \$368	16	552
\$368.01 to \$391	17	586
\$391.01 to \$414	18	621
\$414.01 to \$437	19	655
\$437.01 to \$460	20	690
\$460.01 to \$483	21	724
\$483.01 to \$506	22	759
\$506.01 to \$529	23	793
\$529.01 to \$552	24	828
\$552.01 to \$575	25	862
\$575.01 to \$598	26	897
\$598.01 to \$621	27	931
\$621.01 to \$644	28	966
\$644.01 to \$667	29	1,000
\$667.01 and over	30	1,035

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty-six times his weekly benefit amount or thirty-three and one-third per centum of the wages for employment paid to such individual by employers during his base period, whichever is the lesser: *Provided*, That such total amount of benefits, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(e) Any individual who is unemployed in any week as defined in section 46-301 (e) and who meets the conditions of eligibility for benefits of section 46-309 and is not disqualified under the provisions of section 46-310 shall be paid with respect to such week an amount equal to his weekly benefit amount, less the earnings (if any) payable to him with respect to such week. For the purpose of this subsection, the term "earnings" shall include only that part of the remuneration payable to him for such week which is in excess of 40 per centum of his weekly benefit amount for any week. Such benefits, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(f) **DEPENDENT'S ALLOWANCE.**—In addition to the benefits payable under the foregoing subsections of

this section, each eligible individual who is unemployed in any week shall be paid with respect to such week \$1 for each dependent relative, but not more than \$3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than \$30. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 8; June 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1.)

AMENDMENTS

1954—the act of August 31, 1954, modified the benefit table contained in subsection (b).

Subsection (c) was changed so as to raise the minimum requirement and also raising the maximum provisions, and the claimant is required to have wages in at least 2 quarters of his base period.

Subsection (d) was changed to increase an individual's potential benefits in any benefit year.

Subsection (e) was amended to provide for payment of benefits to eligible persons.

Subsection (f) was changed to eliminate reference to benefits after termination of military service, and to substitute provisions concerning dependent's allowances formerly covered by old subsection (e).

§ 46-308 [8: 319]. Method of paying benefits.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The function of post auditing benefit payments made by the District Unemployment Compensation Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 46-310 [8: 321]. Disqualification for benefits.

(a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the case. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

(b) An individual who has been discharged for misconduct occurring in the course of his most recent work proved to the satisfaction of the Board shall not be eligible for benefits with respect to the

week in which such discharge occurred and for not less than four nor more than nine weeks of consecutive unemployment immediately following such week, as determined by the Board in such case according to the seriousness of the misconduct. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

(c) If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, either to apply for new work found by the Board to be suitable when notified by any employment office or to accept any suitable work when offered to him by any employment office, his union hiring hall, or any employer direct, he shall not be eligible for benefits with respect to the week in which such failure occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the refusal. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount. In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training, experience and earnings of the individual, (2) the distance of the place of work from the individual's place of residence, and (3) the risk involved as to health, safety, or morals.

* * * * *

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Board that such individual is unemployed in such week as a direct result of a labor dispute still in active progress in the establishment where he is or was last employed: *Provided*, That this subsection shall not apply if it is shown to the satisfaction of the Board that—

“(1) he is not participating in or directly interested in the labor dispute which caused his unemployment; and

“(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute: *Provided*, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.”

* * * * *

(h) An individual shall not be eligible for benefits for any week within the six weeks prior to the expected date of such individual's childbirth and within the six weeks after the date of such childbirth. In determining the expected date of child-

birth the Board in its discretion may rely solely upon a doctor's certificate. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11; June 4, 1943, 57 Stat. 114, ch. 117; Aug. 31, 1954, 68 Stat. 994, ch. 1139, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended section 46-310 (a) to modify the disqualification for voluntarily leaving the most recent employer without good cause from a disqualification for the week of leaving and the next 3 weeks to a disqualification for the week of leaving and not less than 4 nor more than 9 additional weeks plus a cancellation of potential benefit rights in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

Subsection (b) was changed to modify the disqualification for discharge for misconduct from a disqualification for the week of discharge and not less than 1 nor more than 4 additional weeks, to a disqualification for the week of discharge and not less than 4 nor more than 9 additional weeks, plus a cancellation of potential benefit rights in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

The disqualification for refusal of suitable work without good cause in subsection (c) was changed from a disqualification for the week in which the refusal occurred and the next 3 weeks to a disqualification for the week of refusal and not less than 4 nor more than 9 additional weeks plus a cancellation of potential benefits in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

The term "lockout" was deleted from the labor dispute disqualification in subsection (f).

A new subsection (h) concerning the disqualification in connection with childbirth was added to the section.

§ 46-313. Administration.

(c) The Board shall each year, not later than May 1, submit to Congress a report covering the administration and operation of this chapter during the preceding calendar year, and containing such recommendations as the Board wishes to make.

(Aug. 28, 1935, 49 Stat. 953, ch. 794, § 14; June 2, 1940, 54 Stat. 733, ch. 524, § 1; June 4, 1943, 57 Stat. 118, ch. 117; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended subsection (c) to make the due date for the Board's annual report to Congress May 1 instead of March 1.

NOTES TO DECISIONS

STATUTE OF LIMITATIONS

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action *Stonewall Construction Company v. R. E. McLaughlin et al., etc.* (D.C. Mun. App. 1959, 151 A. 2d 535).

§ 46-314 [8: 325]. Method of paying administrative expenses.

All moneys received by the Board from the United States under title III of the Social Security Act or from other sources for administering this chapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit

to be used solely to pay such administrative expenses (including expenditures for rent, for suitable office space in the District of Columbia, and for lawbooks, books of reference, and periodicals), traveling expenses when authorized by the Board, premiums on the bonds of its employees, and allowances to investigators for furnishing privately owned motor vehicles in the performance of official duties at rates not to exceed \$40 per month. All such payments of expenses shall be made by checks drawn by the Board and shall be subject to audit by the Commissioners of the District of Columbia in the same manner as are payments of other expenses of the District. Notwithstanding the provisions of this section and the provisions of sections 46-302 and 46-308, the Board is authorized to requisition and receive from its account in the Unemployment Trust Fund in the Treasury of the United States of America, in the manner permitted by Federal law, such moneys standing to the District's credit in such fund, as are permitted by Federal law to be used for expenses incurred by the Board for the administration of this chapter and to expend such moneys for such purposes. Moneys so received shall, immediately upon such receipt, be deposited in the Treasury of the United States in the same special account as are all other moneys received for the administration of this chapter. All moneys received by the Board pursuant to section 302 of the Social Security Act shall be expended solely for the purposes and in the amounts found necessary by the Department of Labor for the proper and efficient administration of this chapter. In lieu of incorporation in this chapter of the provision described in section 303 (a) (9) of the Social Security Act, the Board shall include in its annual report to Congress, provided in section 46-313 (c), a report of any moneys received after July 1, 1941, from the Department of Labor under title III of the Social Security Act, and any unencumbered balances in the unemployment compensation administration fund as of that date, which the Department of Labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Department of Labor for the proper administration of this chapter. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15; July 1, 1941, 55 Stat. 540, ch. 272, § 1; June 4, 1943, 57 Stat. 120, ch. 117; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended the section to provide for the payment of premiums on employees bonds, and to increase the allowance to investigators for the use of privately owned motor vehicles from \$24 to \$40 per month.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 46-315 [8: 326]. District Unemployment Compensation Board.

* * * * *

(c) The Commissioners of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid \$25 for each day of active service. For the purposes of this subsection, a part of a day shall be construed as an entire day.

* * * * *

(Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16; June 4, 1943, 57 Stat. 121, ch. 117; Aug. 31, 1954; 68 Stat. 996, ch. 1139, § 1.)

AMENDMENTS

1954—The act of August 31, 1954, amended subsection (c) by increasing the amount paid employer and employee Board members from \$10 to \$25.

TRANSFER OF FUNCTIONS

Reorganization Order No. 37 of the Board of Commissioners dated June 16, 1953, established the District Unemployment Compensation Board under the direction and control of the Board of Commissioners. The previously existing District Unemployment Compensation Board was abolished and all of its functions and positions including the duties, powers, and authorities of all officers and employees were transferred to the new Board, and all positions, personnel, property, records and unexpended balances relating to the functions and positions transferred were also transferred to the new Board. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 46-318 [8:329]. Protection of rights and benefits.

NOTES TO DECISIONS

ATTACHMENT

Court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining wife's exemption from attachment, in absence of showing that benefits were mingled with wages or that debt was for necessities furnished during unemployment. *Washington Telephone Federal Credit Union v. Breeden* (D.C. Mun. App. 1959, 151 A. 2d 774).

§ 46-319 [8: 330]. Penalties.

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment provided for in this chapter or under an employment security law of any other State, of the Federal Government, or a foreign government for himself or any other individual, shall, for each such offense, be fined not more than \$100 or imprisoned not more than sixty days, or both.

* * * * *

(e) Any person who the Board finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to obtain or increase any benefit under this chapter may be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than one year commencing with the end of such benefit year. Such disqualification shall not affect benefits otherwise properly paid

after the date of such fraud and prior to the date of the ruling of disqualification.

All findings under this subsection shall be made by a claims deputy of the Board and such findings shall be subject to review in the same manner as all other disqualifications made by a claim deputy of the Board. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20; June 4, 1943, 57 Stat. 123, ch. 117; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1 (19 (e).))

AMENDMENTS

1958—Section 1 (19 (e)) of the act of July 25, 1958, cited to text, amends subsection (e) to read as above set out.

1954—The act of August 31, 1954, amended subsection (a) so as to permit the prosecution by the District Board of individuals filing fraudulent claims with it as an agent for another State or the Federal Government.

Subsection (e) was added by the act and provides that an individual who has committed fraud against the Board may receive an administrative disqualification for the remainder of the benefit year and up to 1 year thereafter.

EFFECTIVE DATE OF AMENDMENT

1958—Section 2 of the act of July 25, 1958, cited to text, makes the amendment of subsection (e) effective on the first day of the next succeeding calendar quarter following the enactment of the act.

§ 46-322. All audits by District Auditor.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

REORGANIZATION

The functions prescribed by sections 46-304 (a), 46-304 (l), and 46-308 were transferred from the District Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19 dated November 10, 1952. The functions of the Auditor prescribed by section 46-304 (i) was transferred to the Accounting Office, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 46-326. Commissioners of the District of Columbia.

(a) Wherever this chapter prescribes the performance of a duty by any official or agency of the District of Columbia, such duty shall be performed by the Commissioners of the District of Columbia or such officer, employee, or agency as the Commissioners may delegate to perform the duty for them.

(b) Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by or under the authority of Reorganization Plan Numbered 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished. (Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1.)

CROSS REFERENCE

Reorganization Plan Number 5 of 1952 is set out in the appendix to title 1 of this code.

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap.	Sec.	
29. Admission to licensed places—Posting of price scale.....	47-2901	
30. Closing out sales.....	47-3001	

Chapter 1.—GENERAL PROVISIONS

- Sec.
- 47-112a. Examination of vouchers and disbursement thereon—Accountability.
- 47-112b. Exceptions to liability for overpayments on Government bills of lading or transportation requests.
- 47-113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.
- 47-113b. Deputy disbursing officer—Assistant disbursing officers—Authority and duties.
- 47-113c. Penalties for official misconduct—Bond.
- 47-120a. Liability of auditor or employees—Exceptions—Bond.
- 47-120b. Enforcement of liability against persons certifying—Application for decision by Comptroller General.
- 47-136. Maintenance and repairs of vehicles—Working fund.
- 47-137. Working fund for printing, duplicating and photographing.
- 47-138. Restoration of lapsed appropriations.
- 47-139. "Capital Outlay" appropriations available without regard to fiscal year project limitations.

§ 47-101 [20: 621]. Fiscal year for District of Columbia—Commencement.

NOTES TO DECISIONS

EFFECTIVE DATE OF EXEMPTION

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the appeal by the President. *District of Columbia v. General Federation of Women's Clubs* (1957, 101 U. S. App. D. C. 411, 249 F. 2d 503).

PERSONAL PROPERTY TAX ON BANKRUPT

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc., v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786)

TAXATION OF CORPORATE REORGANIZATION

In proceeding for reorganization of corporate debtor under Bankruptcy Act, District of Columbia taxes are not entitled to special treatment not accorded to taxes owing to the United States. Bankr. Act, §§ 101 et seq., 199, 11 U. S. C. A. §§ 501 et seq., 599. *In re Huyler's* (1952, 107 F. Supp. 318).

Proposed plan of corporate reorganization accorded claim for District of Columbia taxes proper priority

through receipt of subordinated debentures providing for postponement of full payment in money due and bearing interest at six per cent. Bankr. Act, §§ 101 et seq., 174, 199, 11 U. S. C. A. §§ 501 et seq., 574, 599. *In re Huyler's* (1952, 107 F. Supp. 318).

§ 47-112 [20: 638]. Disbursing officer—Appointment—Bond—Duties.

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office and of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, transferred to the Disbursing Office and Accounting Office of the Finance Office of the Department of General Administration the functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies. The same order provided that the previously existing Disbursing Office was abolished. The function of auditing the accounts of the disbursing officer was transferred from the Auditor to the Internal Audit officer by Reorganization Order No. 19. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-112a. Examination of vouchers and disbursement thereon—Accountability.

Notwithstanding any other provision of law, order, or regulation, the disbursing officer of the District of Columbia shall (1) disburse moneys only upon, and in strict accordance with, vouchers duly certified by the auditor of the District of Columbia or by one or more employees in the office of such auditor duly authorized in writing by such auditor to certify such vouchers; (2) make such examination of vouchers as may be necessary to ascertain whether they are in proper form and duly certified; and (3) be held accountable accordingly. (July 30, 1951, 65 Stat. 124, ch. 246, § 1.)

EFFECTIVE DATE

Section 5 of the act of July 30, 1951 (§§ 47-112a, 47-112b, 47-120a and 47-120b), provided: "This Act shall become effective on the first day of the third month following the date of its enactment."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

Functions relating to the certifying of vouchers set out in the foregoing section were transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-112b. Exceptions to liability for overpayments on Government bills of lading or transportation requests.

Notwithstanding the provisions of sections 47-112a, 47-112b, 47-120a, 47-120b, and 47-112b note, or any other Act to the contrary, neither the disbursing officer of the District of Columbia nor the auditor of the District of Columbia or any employee in his office authorized by him to certify vouchers, pursuant to the provisions of sections 47-112a, 47-112b, 47-120a, 47-120b, and 47-112b note, shall be held liable for overpayments made for transportation furnished on Government bills of lading or transportation requests when said overpayments are due to the use of improper transportation rates, classifications, or the failure to deduct the proper amount under land-grant laws or equalization and other agreements. (July 30, 1951, 65 Stat. 125, ch. 246, § 3.)

EFFECTIVE DATE

See note under § 47-112a.

CROSS REFERENCE

For availability of decision repayment on vouchers see § 47-120b.

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions described in this section which related to the Auditor were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-113 [20:639]. Repealed. July 30, 1951, effective July 30, 1951, 65 Stat. 128, ch. 250, § 4.

Section relating to deputy disbursing officer now covered by §§ 47-113a to 47-113c.

§ 47-113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.

The Commissioners of the District of Columbia shall appoint a deputy disbursing officer of the District of Columbia and such assistant disbursing officers of the District of Columbia as they may, in their discretion and subject to available appropriations, consider necessary, at compensation to be fixed in accordance with the Classification Act of 1949, such deputy disbursing officer and assistant disbursing officers to be subordinated to the disbursing officer, District of Columbia. (July 30, 1951, 65 Stat. 127, ch. 250, § 1.)

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, abolished the previously existing Disbursing Office and transferred its functions to the Finance Office of the Department of General Administration. These orders were issued pursuant to Reorganiza-

tion Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-113b. Deputy disbursing officer—Assistant disbursing officers—Authority and duties.

The deputy disbursing officer and the several assistant disbursing officers each shall have authority to make disbursements as an agent of the disbursing officer, District of Columbia; to sign checks drawn against disbursing accounts of the disbursing officer, District of Columbia, with the Treasurer of the United States; and to discharge all other duties required according to law or regulation to be performed by the disbursing officer, District of Columbia. (July 30, 1951, 65 Stat. 127, ch. 250, § 2.)

§ 47-113c. Penalties for official misconduct—Bond.

The deputy disbursing officer and the several assistant disbursing officers shall each be subject, for his official misconduct, to all liabilities and penalties prescribed by law in like cases for the disbursing officer, District of Columbia; and the deputy disbursing officer and each assistant disbursing officer shall give bond to the United States for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and the disbursing officer, District of Columbia, conditioned for the faithful performance of the duties of each of their offices in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands, which bond shall be in the amount required by the Commissioners of the District of Columbia, but to be not less than \$25,000, and to be subject to approval by the said Commissioners and the Secretary of the Treasury and to be filed in the office of the Secretary of the Treasury. (July 30, 1951, 65 Stat. 127, ch. 250, § 3.)

§ 47-114 [20:640]. Advances to the major and superintendent of police.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The function of approving requisitions referred to in section 47-114 was transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952.

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police by Reorganization Order No. 7 dated and effective September 16, 1952, issued pursuant to Reorganization Plan No. 5 of 1952. The plan and reorganization orders are set forth in the appendix to Title 1.

See note under section 47-112 concerning disbursing officer.

§ 47-115 [20:641]. Advances to director of public welfare.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the

Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The function approving the requisitions described in section 47-115 was transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

See note under section 47-112 concerning disbursing officer.

§ 47-116 [20:642]. Advances to chief probation officer of juvenile court.

TRANSFER OF FUNCTIONS

See note under section 47-115.

§ 47-117 [20:643]. Advances to superintendent of penal institutions.

TRANSFER OF FUNCTIONS

See note under section 47-115.

§ 47-118 [20:643a]. Advances to Librarian of Public Library.

CROSS REFERENCE

For omnibus provisions authorizing the disbursing officer of the District of Columbia to advance moneys for various purposes, see section 10-103a.

REPEATED

Act July 5, 1955, 69 Stat. 262, ch. 272, § 9.

Act July 31, 1953, 67 Stat. 295, ch. 299, § 11.

Act July 5, 1952, 66 Stat. 391, ch. 576, § 11.

Act Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11.

TRANSFER OF FUNCTIONS

See note under section 47-115.

§ 47-119 [20:644]. Notification to disbursing officer of objections to allowance of disbursements.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of the Auditor in connection with the suspension of items in accounts of the disbursing officer were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

See note under section 47-112 concerning the disbursing officer.

§ 47-120 [20:645]. Auditor—Duties—Bond.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director of General Administration by Reorganization Order No. 3 of the Board of Commissioners. Reorganization Order No. 20 abolished the previously existing Office of the Auditor and transferred all of the functions referred to in section 47-120 to the Accounting Officer, Finance Office, Department of General Administration with the exception of the functions covered by the sentence, "He shall also examine and audit all accounts, not otherwise provided for by law". These latter functions were transferred to the Department of General Administration by Reorganization Order No. 3.

These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-120a. Liability of Auditor or employees—Exceptions—Bond.

The auditor of the District of Columbia or any employee in his office duly authorized in writing by such auditor who certifies a voucher shall (1) be held responsible for the existence and correctness of the facts recorded in the certificate or otherwise stated in the voucher or its supporting papers, including the correctness of computations on such voucher, and for the legality of the proposed payment under the appropriation or fund involved; (2) be required to give bond to the United States and to the District of Columbia, with good and sufficient surety, approved by the Secretary of the Treasury, in such amount as may be determined by the Commissioners of the District of Columbia; and (3) be held responsible for and required to make good to the United States or to the District of Columbia the amount of any illegal, improper, or incorrect payment resulting from any false, erroneous, or misleading certification made by him as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved: *Provided*, That the Comptroller General may, in his discretion, relieve such certifying officer or employee of liability for any payment otherwise proper whenever he finds (1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States or the District of Columbia has received value for such payment: *Provided further*, That the bond required by this section to be given by the auditor of the District of Columbia shall be conditioned for the faithful discharge of all of the duties of his office and shall be in lieu of any other bond now required by law. (July 30, 1951, 65 Stat. 125, ch. 246, § 2.)

EFFECTIVE DATE

See note under § 47-112a.

CROSS REFERENCE

For exceptions to auditors' liability for overpayments on Government bills of lading or transportation requests see § 47-112b.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of the auditor relating to certifying officers and employees were transferred from the auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952, as amended by Reorganization Order No. 25 dated December 30, 1952. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the appendix to Title 1.

§ 47-120b. Enforcement of liability against persons certifying—Application for decisions by Comptroller General.

The liability of any person who certifies any voucher pursuant to the provisions of sections 47-112a, 47-112b, 47-120a, 47-120b, and 47-112 note shall be enforced in the same manner and to the same extent as now provided by law with respect to enforcement of the liability of disbursing and other accountable officers; and they shall have the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment on any vouchers presented to them for verification. (July 30, 1951, 65 Stat. 125, ch. 246, § 4.)

EFFECTIVE DATE

See note under § 47.112a.

§ 47-121 [20: 646]. Auditor—Countersigning checks.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of the auditor in connection with the preparation and countersigning of checks were transferred from the auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-122 [20: 647]. Auditor's chief clerk, duties.

TRANSFER OF FUNCTIONS

All functions of the auditor of the District of Columbia including the functions of all officers, employees and subordinate agencies were transferred to a new agency, "The Department of General Administration" headed by a "Director of General Administration" by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, transferred the functions of the auditor referred to in this section to the Accounting Officer, Finance Office, Department of General Administration. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-123 [20: 648]. Auditor to audit all accounts.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 47-124 [20: 649]. Amount of disbursing officers' outstanding checks to be deposited in Treasury.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of the auditor with respect to outstanding checks were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, De-

partment of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-125 [20: 650]. Disbursing officer's checks—Payment to holders of outstanding checks.

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of the auditor with respect to the audit and approval of claims based on outstanding checks were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

Hereafter the Commissioners are authorized in their discretion to invest and reinvest at any time in United States Government securities, with the approval of the Secretary of the Treasury, any part of the general, special, or trust funds, of the District of Columbia, not needed to meet current expenses, to deposit the interest accruing from such investments to the credit of the fund from which the investment was made, and the Secretary of the Treasury is authorized to sell or exchange such securities for other Government securities, and deposit the proceeds to the credit of the appropriate fund. (July 5, 1955, 69 Stat. 262, ch. 272, § 7; June 29, 1956, 70 Stat. 453, ch. 479, § 7.)

COMPILER'S NOTE

This section was taken from the District of Columbia Appropriation Act of 1956. Similar provisions were contained in the appropriation acts for previous years as follows:

- July 5, 1955, 69 Stat. 262, ch. 272, § 7.
- July 1, 1954, 68 Stat. 394, ch. 449, § 8.
- July 31, 1953, 67 Stat. 299, § 8.
- July 5, 1952, 66 Stat. 390, ch. 576, § 8.
- Aug. 3, 1951, 65 Stat. 172, ch. 292, § 8.
- July 18, 1950, 64 Stat. 369, ch. 467, § 9.
- June 29, 1949, 63 Stat. 324, ch. 279, § 9.
- June 19, 1948, 62 Stat. 558, ch. 555, § 9.
- July 25, 1947, 61 Stat. 448, ch. 324, § 9.
- June 30, 1945, 59 Stat. 294, ch. 209, § 8.

AMENDMENTS

1956.—The act of June 29, 1956, 70 Stat. 453, ch. 479 § 7, amended the section by adding the word "Hereafter" in the beginning of the section and omitting the word "hereby."

§ 47-136. Maintenance and repairs of vehicles—Working fund.

The Commissioners are authorized to establish a permanent working fund, which shall be available without fiscal-year limitation, for necessary expenses of maintenance and repair of vehicles of the Government of the District of Columbia; and said fund shall be reimbursed, or credited in advance if

required by the Director, Department of Highways, for the costs of all work performed thereunder. (July 1, 1954, 68 Stat. 396, ch. 449, § 18.)

§ 47-137. Working fund for printing, duplicating, and photographing.

The Commissioners are authorized to establish a working fund without fiscal-year limitation for the purpose of printing, duplicating, and photographing; and the unexpended balances in the miscellaneous trust fund accounts "Operating Account, Printing" and "Operating Account, Blueprinting" shall be deposited to said working fund; and the fund shall be reimbursed for all services performed thereunder. (July 1, 1954, 68 Stat. 395, ch. 449, § 17.)

REPEATED

Act July 5, 1955, 69 Stat. 263, ch. 272, § 14.

§ 47-138. Restoration of lapsed appropriations.

The Secretary of the Treasury is authorized to restore from lapsed appropriations amounts certified by the Commissioners, or their designated representatives, as being necessary for the payment of audited claims under such appropriations. (Aug. 6, 1958, 72 Stat. 512, Pub. L. 85-594, § 14.)

§ 47-139. "Capital Outlay" appropriations available without regard to fiscal year project limitations.

Amounts appropriated under "Capital Outlay," together with such amounts previously appropriated under "Capital Outlay," shall be available within the appropriations involved without regard to fiscal year project limitations. (July 23, 1959, 73 Stat. 235, Pub. L. 86-104, § 1.)

Chapter 2.—BUDGET ESTIMATES

§ 47-201 [20:659]. Salaries of force for protection of courthouse—Payment—Estimates.

TRANSFER OF FUNCTIONS

All functions of the Budget Office including the functions of all officers, employees and subordinate agencies were transferred to the Director of the Department of General Administration by Reorganization Order No. 3 dated August 28, 1952. Reorganization Order No. 24 dated December 30, 1952, established a Budget Office in the Department of General Administration headed by a Budget Officer. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-205 [20:663]. Commissioners' annual estimates—To include report of assignment of certain market employees.

TRANSFER OF FUNCTIONS

All functions of the Budget Office including the functions of all officers, employees and subordinate agencies were transferred to the Director of the Department of General Administration by Reorganization Order No. 3 dated August 28, 1952. Reorganization Order No. 24 dated December 30, 1952, established a Budget Office in the Department of General Administration headed by a Budget Officer and abolished the previously existing Budget office. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-211 [20:669]. Estimates for expenses of District—Order of arrangement.

TRANSFER OF FUNCTIONS

All functions of the Budget Office including the functions of all officers, employees and subordinate agencies were transferred to the Director of the Department of General Administration by Reorganization Order No. 3 dated August 28, 1952. Reorganization Order No. 24 dated December 30, 1952, established a Budget Office in the Department of General Administration headed by a Budget Officer. The order abolished the previously existing Budget Office including the office of the head thereof. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

Sec.

47-312. Collection of taxes by distraint—Acquisition of liens.

47-313. Jeopardy assessments of taxes by assessing authority of the District.

§ 47-301 [20:628]. Collector of taxes—To collect all revenues.

NOTES TO DECISIONS

MANNER OF PAYMENT

Proposed plan of corporate reorganization accorded claim for District of Columbia taxes proper priority through receipt of subordinated debentures providing for postponement of full payment in money due and bearing interest at six percent. *In re Huyler's* (1952, 107 F. Supp. 318).

TRANSFER OF FUNCTIONS

All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-303 [20:630]. Deputy collector of taxes—Duties—Bond.

TRANSFER OF FUNCTIONS

See the note under section 47-301 concerning the Collector of Taxes.

§ 47-304 [20:631]. Cashier in collector's office—Duties—Responsibility.

TRANSFER OF FUNCTIONS

See the note under section 47-301 concerning the Collector of Taxes.

§ 47-305 [20:632]. Account books to be kept by collector.

TRANSFER OF FUNCTIONS

See the note under section 47-301 concerning the Collector of Taxes.

§ 47-306 [20:633]. Certificate of tax assessor as to taxes and assessments due—Fee.

TRANSFER OF FUNCTIONS

See the note under section 47-301 concerning the Collector of Taxes.

§ 47-307 [20:746f]. Waiver of interest and penalties.

TRANSFER OF FUNCTIONS

Reorganization Order No. 20 provided that the Committee on Special Assessment Appeals established by that

order would also consider petitions filed pursuant to section 47-307 and submit its recommendations to the Commissioners. This order was dated November 10, 1952, and was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 47-309 [20:634]. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions of approving and auditing itemized vouchers for District expenses were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-310 [20:635]. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The function of making monthly accounts for all disbursements of the Commissioners to the General Accounting Office was transferred from the auditor to the Accounting Officer by Reorganization Order No. 20 dated November 10, 1952. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-311 [20:636]. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

§ 47-312. Collection of taxes by distraint—Acquisition of liens.

In addition to any other methods or devices or both provided by law or regulation for the collection of various taxes (except real property taxes) due the District, any tax imposed by any law applicable to District taxes, and penalties and interest thereon, when such tax has become due and payable, may be collected in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for all such taxes, penalties, and interest may be acquired in the same manner that liens for personal property taxes are acquired. (May 18, 1954, 68 Stat. 119, ch. 218, title XVI, § 1601.)

APPLICATION

Section 1603 of the act of May 18, 1954, provided that the provisions of section 47-312 are applicable to taxes assessed within three years prior to May 18, 1954.

§ 47-313. Jeopardy assessments of taxes by assessing authority of the District.

If the assessing authority of the District believes that the collection of any tax imposed by any law applicable to the District Government (except real property taxes) will be jeopardized by delay, the assessing authority shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all the interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest, shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector of Taxes for the District for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful. For the purposes of this section the word "assessing authority" means the Assessor, the Board of Personal Tax Appraisers or any member thereof, and any other official or officials of the District, or their duly authorized representatives, having the duty to assess District taxes. (May 18, 1954, 68 Stat. 120, ch. 218, title XVI, § 1602.)

APPLICATION

Section 1603 of the act of May 18, 1954, provided that the provisions of section 47-313 are applicable to taxes assessed within three years prior to May 18, 1954.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

§ 47-406 [20:676]. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 dated April 3, 1953, as amended April 10, 1953 provided that the functions of the Surveyor described in section 47-406 would continue to be delegated to the Office of the Assessor, Finance Office, Department of General Administration. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 47-407 [20:677]. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 dated April 3, 1953 as amended April 10, 1953 provided that the functions of the Office of the Surveyor described in the above section would continue to be delegated to the Office of the Assessor. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

§ 47-501 [20:681]. Assessment of taxes on real and personal property—Rate of taxation—Collection.

NOTES TO DECISIONS

EFFECTIVE DATE OF EXEMPTION

Where private act declared that property of club was exempt from taxation but was silent as to liability for

taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia v. General Federation of Women's Clubs* (1957, 101 U. S. App. D. C. 411, 249 F. 2d 503).

PERSONAL PROPERTY TAX ON BANKRUPT

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

PRIORITY

In proceeding for reorganization of corporate debtor under Bankruptcy Act, District of Columbia taxes are not entitled to special treatment not accorded to taxes owing to the United States. *In re Huyler's* (1952, 107 F. Supp. 318).

§ 47-501a. Minimum rate of taxation on real property.

For each fiscal year after May 18, 1954 the rate of taxation on real property in the District of Columbia shall not be less than 2.20 per centum on the assessed value of such property. (May 18, 1954, 68 Stat. 119, ch. 218, title XV, § 1501.)

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

Chapter 6.—TAX ASSESSOR

§ 47-601 [20:691]. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, abolished the Office of the Assessor and transferred its functions to the Finance Office. The same order provided that an Office of the Assessor would be created in the Finance Office. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-602 [20:692]. Assessor to furnish bonds.

TRANSFER OF FUNCTIONS

See note under section 47-601 concerning the Office of the Assessor.

§ 47-603 [20:748]. Records to be kept by assessor—Duties of assessor.

TRANSFER OF FUNCTIONS

See note under section 47-601 concerning the Office of the Assessor.

§ 47-604 [20:693]. Board of assistant assessors—Appointment—Qualifications—Clerk.

The Commissioners of the District of Columbia shall appoint as a permanent board of assistant assessors such persons as are conversant with real

estate values in the District of Columbia and who have been bona fide residents of the District for a period of at least five years, except that two of such appointees may be persons who have been bona fide residents of the District of Columbia Metropolitan Area for a period of at least five years. Each person so appointed on said board shall, within ten days after receiving notice thereof, take and subscribe an oath to diligently, faithfully, and impartially perform all and singular the duties imposed upon him by law. If any such appointee shall fail to qualify as aforesaid within the time prescribed, or shall fail to enter upon the discharge of his duties within fifteen days after such qualification, the appointment shall be void, and the Commissioners shall forthwith appoint another suitable person, who shall qualify as above provided. And said Commissioners are hereby authorized and directed to appoint a clerk for said board of assistant assessors; and said clerk shall also be the clerk for the board of equalization and review hereinafter provided for. For the purposes of sections 47-209, 47-604, 47-606, 47-701, 47-702, 47-704 to 47-710, and 47-712, the term "District of Columbia Metropolitan Area" means the District of Columbia, the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in Virginia, and the counties of Montgomery and Prince Georges in Maryland. (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 4, 1923, 42 Stat. 1488, ch. 265; July 3, 1926, 44 Stat. 832, ch. 759, § 1; Aug. 3, 1954, 68 Stat. 651, ch. 654, § 1.)

AMENDMENTS

1954—The act of August 3, 1954, amended the first sentence by substituting the present language for the previous language which read:

"The commissioners of the District of Columbia shall appoint six discreet persons, who shall have been bona fide residents of the District of Columbia for the period of at least five years, and conversant with real estate values therein, as a permanent board of assistant assessors."

The act also added the last sentence defining the Metropolitan Area.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor and of the Board of Assistant Assessors including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, abolished the Office of Assessor and the Board of Assistant Assessors and transferred their functions to the Finance Office in the Department of General Administration. The same order established in the Finance Office an Office of the Assessor headed by an Assessor, and established the Board of Assistant Assessors under the Assessor. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-605 [20:694]. Assistant assessors—Three members to assess real property and three members to assess personal property.

TRANSFER OF FUNCTIONS

See note under section 47-604 concerning the Board of Assistant Assessors.

§ 47-606 [20:695]. Assessor to have power to administer oaths and summon witnesses.

TRANSFER OF FUNCTIONS

See notes under sections 47-601, 47-604, and 47-605 concerning the Office of the Assessor, the Board of Assistant Assessors, and the Board of Equalization and Review.

Chapter 7.—ASSESSMENT OF REAL PROPERTY

§ 47-704 [20:698]. Commissioners to supply Board of Assistant Assessors with plats.

TRANSFER OF FUNCTIONS

See note under section 47-601 concerning the Office of the Assessor and the note under section 47-604 concerning the Board of Assistant Assessors.

§ 47-705 [20:699]. Assistant assessor's valuation to be made separately for improvements and each tract or lot.

TRANSFER OF FUNCTIONS

See note under section 47-604 concerning the Board of Assistant Assessors.

§ 47-706 [20:700]. Board of Assistant Assessors to make annual tabulated report of property assessed.

TRANSFER OF FUNCTIONS

See note under section 47-604 concerning the Board of Assistant Assessors.

NOTES TO DECISIONS

EFFECTIVE DATE OF EXEMPTION

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia v. General Federation of Women's Clubs* (1957, 101 U. S. App. D. C. 411, 249 F. 2d 503).

§ 47-708 [20:702]. Board of Equalization and Review—To meet annually—Notice of meetings—Duties.

The Assessor and Deputy Assessor of the District and the board of all of the assistant assessors, with the Assessor as chairman, shall compose a Board of Equalization and Review, and as such Board of Equalization and Review they shall convene in a room to be provided for them by the Commissioners, on the first Monday of January of each year, and shall remain in session until the first Monday in April of each year, after which date no complaint as to valuation as herein provided shall be received or considered by such Board of Equalization and Review. Public notice of the time and place of such session shall be given by publication for two successive days in two daily newspapers in the District not more than two weeks or less than ten days before the beginning of said session. It shall be the duty of said Board of Equalization and Review to fairly and impartially equalize the value of real property made by the board of assistant assessors as the basis for assessment. Any five of said Board of Equalization and Review shall constitute a quorum for business, and, in the absence of the Assessor, a temporary chairman may be selected. They shall immediately proceed to equalize the valuations made by the board of assistant assessors

so that each lot and tract and improvements thereon shall be entered upon the tax list at their value in money; and for this purpose they shall hear such complaints as may be made in respect of said assessments, and in determining them they may raise the valuation of such tracts or lots and improvements as in their opinion may have been returned below their value and reduce the valuation of such as they may believe to have been returned above their value to such sum as in their opinion may be the value thereof. (As amended July 10, 1952, 66 Stat. 544, ch. 649, § 3 (c).)

AMENDMENTS

1952—The act of July 10, 1952, provided that the board may also raise the value of improvements on tracts or lots.

TRANSFER OF FUNCTIONS

See notes under sections 47-601, 47-604, and 47-605 concerning the Office of the Assessor, the Board of Assistant Assessors, and the Board of Equalization and Review.

NOTES TO DECISIONS

EFFECTIVE DATE OF EXEMPTION

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia v. General Federation of Women's Clubs* (1957, 101 U. S. App. D. C. 411, 249 F. 2d 503).

§ 47-709 [20:703]. Valuation of real property to be complete on the first Monday of May annually.

The valuation of the real property made and equalized as aforesaid shall be completed not later than the first Monday of May annually. The valuation of said real property made and equalized as aforesaid shall be approved by the Commissioners not later than July 1, annually, and when approved by the Commissioners shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law, except as hereinafter provided. Any person aggrieved by any assessment, equalization, or valuation made may within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2404 and 47-2413: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal. (As amended July 10, 1952, 66 Stat. 544, ch. 649, § 3 (c).)

AMENDMENTS

1952—The act of July 10, 1952, added the exception to the proviso.

TRANSFER OF FUNCTIONS

See note under section 47-605 concerning the Board of Equalization and Review.

NOTES TO DECISIONS

EXEMPTION

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia v. District of Columbia* (1953, 92 U. S. App. D. C. 73, 202 F. 2d 808).

§ 47-710 [20: 704]. Real property and improvements becoming subject to taxation to be listed annually.

Annually, on or prior to July 1 of each year, the Board of Assistant Assessors, shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which shall not have theretofore been assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage: *Provided*, That the Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments between September 1 and September 30 and determine the same not later than October 15 of the same year.

Any person aggrieved by any assessment or valuation made in pursuance of this paragraph may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47-2404 and 47-2413: *Provided, however*, That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with this subsection, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (As amended July 10, 1952, 66 Stat. 545, ch. 649, § 3 (c).)

AMENDMENTS

1952—The proviso of the section relating to appeal from assessment or valuation previously read: "That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided."

TRANSFER OF FUNCTIONS

See notes under sections 47-604 and 47-605 concerning the Board of Assistant Assessors and the Board of Equalization and Review.

NOTES TO DECISIONS

EFFECTIVE DATE OF EXEMPTION

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on

July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia v. General Federation of Women's Clubs* (1957, 101 U. S. App. D. C. 411, 249 F. 2d 503).

§ 47-711 [20: 705]. New buildings under roof to be included in list.

In addition to the annual assessment of all real estate made on or prior to July 1 of each year there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the second half of the then current year payable in the month of March. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause prior to January 1 of each year the said board of assistant assessors shall reduce the assessment on said property to the extent of said damage for the second half of the then current year payable in the month of March. The Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments for the second half of said year between March 1 and March 31 and determine said complaints not later than April 15 of the same year. Any person aggrieved by any assessment made in pursuance of this paragraph may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2404 and 47-2413: *Provided, however*, That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with this subsection, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (As amended July 10, 1952, 66 Stat. 545, ch. 649, § 3 (c).)

AMENDMENTS

1952—The proviso relating to appeal previously read: "That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided."

TRANSFER OF FUNCTIONS

See note under section 47-605 concerning the Board of Assistant Assessors and the Board of Equalization and Review.

§ 47-712 [20: 706]. Assessment of omitted property—Voided assessments, reassessment of property.

TRANSFER OF FUNCTIONS

See note under section 47-601 concerning the Office of the Assessor and the note under section 47-604 concerning the Board of Assistant Assessors.

NOTES TO DECISIONS

RETROACTIVE ASSESSMENT

The Commissioners of the District of Columbia have no function with respect to statutory procedure prescribed for retroactive assessment of omitted property, and the only officials who have a duty in that process are members of Board of Assistant Assessors, who make the retroactive assessment, and Assessor, who notifies taxpayer of assessment by sending him a tax bill. *Trustees of St.*

Paul Methodist Episcopal Church South v. District of Columbia (1954, 94 U. S. App. D. C. 78, 212 F. 2d 244).

Assessment of omitted property by Board of Assistant Assessors is not required to be submitted to or to be approved by Board of Equalization and Review or Commissioners of District, and is not subject to administrative review except in the Tax Court. *Id.*

§ 47-716 [20:710]. Application for redistribution or reassessment—Notice—Validity.

TRANSFER OF FUNCTIONS

See note under section 47-601 concerning the Office of the Assessor and the note under section 47-604 concerning the Board of Assistant Assessors.

§ 47-717 [20:711]. Reassessment of real estate by Board of Assistant Assessors.

TRANSFER OF FUNCTIONS

See note under section 47-604 concerning the Board of Assistant Assessors.

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.

47-831. American Veterans of World War II—Lot 805.

47-832. Veterans of Foreign Wars—Lots 38, 20, and 19.

§ 47-801a. Government property—Property of educational, charitable, religious or scientific institutions—Additional grounds of—Profits arising from sale of.

NOTES TO DECISIONS

ACTIVITIES AND PURPOSES

Where tax-exempt organization owned house in which its president lived and expected him to use same for its purposes, and he paid no rent, house and its yard were not subject to tax. *District of Columbia v. The Brookings Institution* (1958, 103 U.S. App. D.C. 98, 254 F. 2d 955).

ADDITIONAL GROUNDS

Statute imposing real estate tax upon "additional grounds" of religious institutions which are sold at profit after having been previously exempt, requires that taxing authority classify grounds involved as either those required and used for actually carrying on purposes of institution, or as "additional grounds". *Simpson Memorial Methodist Ch. v. District of Columbia* (1952, 91 U. S. App. D. C. 105, 199 F. 2d 169).

ADMINISTRATIVE REVIEW

Except in cases of absolute exemption, the tax exemption of each year is dependent on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Workshop Center of the Arts v. District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

CHARITABLE ORGANIZATIONS

Organization which operated a residential settlement house, including classes and social activities for adults and children and day care of children, which charged moderate fees for its services based on individual's ability to pay, which derived its income largely from charitable sources, and which paid its officers no salary, was a "charity" and its realty was exempt from taxation, though organization received fees from those who could afford to pay, and though a few of the beneficiaries could perhaps pay more than they did for services received. *District of Columbia v. Friendship House Ass'n.* (1952, 91 U. S. App. D. C. 137, 198 F. 2d 530).

CONSTRUCTION

Under paragraph of statute relating to exemptions from taxation of realty owned by religious institutions, and

providing in first numbered subparagraph for exemption of grounds required and used by such institutions, and in second numbered subparagraph for exemption of additional grounds, and in third unnumbered subparagraph for imposition of realty tax upon sale at profit in the future, third unnumbered subparagraph was part of second and indicated intention that such tax was to be imposed only in relation to sale of such additional grounds. *Simpson Memorial Methodist Ch. v. District of Columbia* (1952, 91 U. S. App. D. C. 105, 199 F. 2d 169).

Statute defining taxable income for income tax purposes has no bearing upon statute relating to imposition of real property tax upon previously exempt additional grounds of religious institution which have been sold at profit, and fact that determination of gain or loss on sale of church properties was not in accord with income tax statute could not invalidate assessment. *Simpson Memorial Methodist Ch. v. District of Columbia* (1952, 91 U. S. App. D. C. 105, 199 F. 2d 169).

It is not necessary for an organization, in order to qualify as a "charity" whose realty is exempt from taxation, that it confine its activities to the furnishing of bare necessities of life, such as food, shelter, and clothing, and an activity is equally a charity when it affords some of the amenities of a decent life to those who are unable to pay anything at all or the full price thereof. *District of Columbia v. Friendship House Ass'n.* (1952, 91 U. S. App. D. C. 137, 198 F. 2d 530).

CONSTRUCTION OF EXEMPTION

Exemptions from taxation are strictly construed. *Bethel Pentecostal Tabernacle, Inc. v. District of Columbia* (D. C. Mun. App. 1954, 106 A. 2d 143).

EDUCATIONAL PURPOSES

Where George Washington University, prior to assessment day, had purchased two buildings which required remodeling before they could be used for university purposes, and on assessment day the alteration of one of the buildings was actually in progress and on the other preliminary work which was necessary to prepare it for remodeling was then being done, the buildings were within provision of District of Columbia Code exempting from taxation "buildings belonging to and operated by" universities which are not organized or operated for private gain and which embrace the general recognized relationship of teacher and student. *District of Columbia v. The George Washington University* (1958, 104 U.S. App. D.C. 324, 262 F. 2d 36).

Automobile parking spaces owned by George Washington University and rented to students for nominal fee of 20 cents a half-day, a fee not shown to exceed cost of operation, were exempt from District of Columbia realty taxation under statute providing exemption for grounds belonging to and reasonably required and actually used for carrying on the activities and purposes of university not organized or operated for private gain. *District of Columbia v. The George Washington University* (1957, 100 U. S. App. D. C. 140, 243 F. 2d 246).

Parking lots owned by university for free use of its faculty members or employees were used for carrying on activities and purposes of university, and were reasonably required, within statute exempting such grounds from taxation by District of Columbia. *District of Columbia v. The George Washington University* (1955, 95 U. S. App. D. C. 214, 221 F. 2d 87).

In order to qualify under statute exempting real estate belonging to educational institutions from taxation in District of Columbia, institution must render service which relieves District of Columbia of burden it otherwise might assume. *Washington Chapter of American Institute of Banking v. District of Columbia* (1953, 92 U. S. App. D. C. 139, 208 F. 2d 68).

Where prime objective of institution was not education or elevation of public or of some reasonable cross-section thereof, but merely training of bank employees so as to render them more efficient, institution's real estate was not exempt from taxation under statute exempting real property of educational institutions from taxation in District of Columbia. *Id.*

EXCLUSIVE REMEDY

Under statute providing that payment of tax on property claimed to be exempt "shall not be prerequisite" to an appeal to Board of Tax Appeals, Congress intended such remedy to be an exclusive one for review of action of assessing authorities, and hence municipal court lacked jurisdiction of action by taxpayer, which did not appeal to the Board of Tax Appeals, to recover taxes on property claimed to be exempt. *Workshop Center of Arts v. District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

EXEMPTION CONDITIONS

Under District of Columbia statute exempting churches from taxation and defining a church building as one primarily and regularly used by its congregation for public religious worship, building being prepared on tax day, for use as a church was not exempt, even though congregation gathered at irregular intervals to clean up building and engaged in prayer and singing in building before doing so. *Bethel Pentecostal Tabernacle, Inc. v. District of Columbia* (D. C. Mun. App. 1954, 106 A. 2d 143).

Under District of Columbia statute exempting churches from taxation, concurrence of ownership and use is essential to exemption, and religious corporation could not claim exemption for building, deed to which was not delivered until after tax day, even if the building had been used, on tax day, in a manner authorizing exemption. *Id.*

EXEMPTION PENDING REMODELING

Where charitable organization acquired a building in January, 1957, to house its activities, but extensive remodeling was required before the building could be used for the intended purpose, and a contract for construction and installation of an elevator was executed in May of 1957, building was exempt from realty taxes for fiscal year beginning July 1, 1957, notwithstanding fact contract for general renovation was not signed until July 9, 1957. *District of Columbia v. The Salvation Army* (1959, 105 U.S. App. D.C. 85, 264 F. 2d 371).

OWNERSHIP AND USE BY RELIGIOUS ORGANIZATIONS

Old church building, which was leased by church to another religious body for religious services, the church reserving the right to hold services at times which would not conflict with those of the lessee, was not primarily and regularly used by its congregation for public "religious worship", within statute granting tax exemption to church buildings so used. *Trustees of St. Paul Methodist Episcopal Church South v. District of Columbia* (1954, 94 U. S. App. D. C. 78, 212 F. 2d 244).

In statute granting exemption from taxation to a church building primarily and regularly used by "its" congregation for public religious worship, the antecedent of quoted word is the religious organization which owns the building, and hence concurrence of ownership and use is essential to the exemption. *Id.*

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia v. District of Columbia* (1953, 92 U. S. App. D. C. 73, 202 F. 2d 808).

QUESTIONS OF FACT

Where record before Board of Tax Appeals was such as to permit findings of fact and conclusion to be made as to whether certain property was "additional grounds" of religious institution, with result that proceeds from sale thereof would be subject to imposition of realty tax to extent of one-half of profit, in absence of such findings having been made, court would not undertake to do so, but would remand case in order that findings might be made initially by the Board. *Simpson Memorial Methodist Ch. v. District of Columbia* (1952, 91 U. S. App. D. C. 137, 199 F. 2d 169).

RELIGIOUS CORPORATIONS AND SOCIETIES, DEFINED

Belief in or teaching of a Supreme Being or supernatural power is not essential to qualify for tax exemption accorded to "religious corporations," "churches" or "religious societies," under the D. C. Code. *Washington Eth-*

ical Society v. District of Columbia (1957, 101 U. S. App. D. C. 371, 249 F. 2d 127).

RELIGIOUS PRACTICES

A Washington Ethical Society which holds regular Sunday services and has "leaders" to preach and minister to the members who are trained graduates of established theological institutions qualifies as a "religious corporation or society" and its building is one primarily and regularly used for public religious worship and entitled to tax exemption under the District of Columbia Tax Statute. *Washington Ethical Society v. District of Columbia* (1957, 101 U. S. App. D. C. 371, 249 F. 2d 127).

RELIGIOUS PURPOSES

On petition to review a decision of the District of Columbia Tax Court exempting from realty tax certain lots adjacent to a church building used for parking of church members' automobiles during services, evidence sustained finding that lots in question were reasonably required and actually used for the carrying out of the activities and purposes of the church. *District of Columbia v. Church of the Pilgrims* (1957, 101 U. S. App. D. C. 68, 247 F. 2d 59).

§ 47-801b. Income producing property of exempt institutions.

NOTES TO DECISIONS

TOLLING OF TIME TO APPEAL

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Jewish War Veterans, Etc. v. District of Columbia* (1957, 100 U. S. App. D. C. 223, 243 F. 2d 646).

§ 47-801c. Report as to use of exempt property.

NOTES TO DECISIONS

TOLLING OF TIME TO APPEAL

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Jewish War Veterans, Etc. v. District of Columbia* (1957, 100 U. S. App. D. C. 223, 243 F. 2d 646).

§ 47-801e. Appeal, persons entitled.

NOTES TO DECISIONS

ADMINISTRATIVE REVIEW

Except in cases of absolute exemption, the tax exemption in each year is dependent on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Workshop Center of the Arts v. District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

EXCLUSIVE REMEDY

Under statute providing that payment of tax on property claimed to be exempt "shall not be prerequisite" to an appeal to Board of Tax Appeals, Congress intended such remedy to be an exclusive one for review of action of assessing authorities, and hence municipal court lacked jurisdiction of action by taxpayer, which did not appeal to the Board of Tax Appeals, to recover taxes on property claimed to be exempt. *Workshop Center of Arts v. District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

TOLLING OF TIME TO APPEAL

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Jewish War Veterans, Etc. v. District of Columbia* (1957, 100 U. S. App. D. C. 223, 243 F. 2d 646).

§ 47-831. American Veterans of World War II—Lot 805.

The property situated in square 160 in the city of Washington, District of Columbia, described as lot 805, owned, occupied, and used by the AMVETS, American Veterans of World War II, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of sections 47-801b, 47-801c and 47-801e. (June 28, 1952, 66 Stat. 285, ch. 484, § 1.)

§ 47-832. Veterans of Foreign Wars—Lots 38, 20, and 19.

The property situated in square 757 in the city of Washington, District of Columbia, described as lots 38, 20, and 19, owned by the Veterans of Foreign Wars of the United States, is hereby exempt from all taxation so long as the same is owned and occupied by the Veterans of Foreign Wars of the United States and is not used for commercial purposes, subject to the provisions of sections 47-801b, 47-801c, and 47-801e. (July 19, 1954, 68 Stat. 493, ch. 543, § 1; Sept. 21, 1959, 73 Stat. 599, Pub. L. 86-333, § 1.)

AMENDMENTS

1959—Act of September 21, 1959, cited to text, amended section by striking out square 724 and substituting square 757 in place thereof, and also by striking out lots 819 to 824 and substituting lots 38, 20, and 19 in place thereof.

Chapter 10.—REAL PROPERTY TAX SALES**§ 47-1003 [20:793]. Deposit required—Certificate of sale—Tax deed—Redemption.****NOTES TO DECISIONS****TAX TITLE, EFFECT OF**

A tax deed after sale for District of Columbia taxes to a lot over which lay an easement of passageway created by deed and appurtenant to another lot did not extinguish the easement. *Engel v. Catucci* (1952, 91 U. S. App. D. C. 54, 197 F. 2d 597).

§ 47-1008 [20:797.] Payment of expenses of advertising.**COMPILERS' NOTE**

The District of Columbia appropriations act of Aug. 6, 1958, Pub. Law 85-594, § 1, under the heading of "Department of General Administration" authorized the Commissioners to fix annually a charge "for each lot or piece of property advertised." Pursuant to this authority the commissioners issued the following order:

October 28, 1958. Order No. 58-1831.

Ordered: That, pursuant to and under authority of Public Law 85-594, 85th Congress (General Administration), approved August 6, 1958, making appropriations for the Government of the District of Columbia for the fiscal year ending June 30, 1959, and for other purposes, a charge of one dollar and thirty cents (\$1.30) is hereby fixed for advertising for sale each lot or piece of property on which taxes were in arrears on July 1, 1958, also for all unpaid water charges, sanitary sewer service charges, and special assessments subject to sale, such tax sale to be made in accordance with Commissioners' Order No. 58-1837, dated November 4, 1958.

Chapter 11.—SPECIAL ASSESSMENTS**§ 47-1101 [20:746]. Protest against special assessment—Hearing—Report and exceptions—Decision.****TRANSFER OF FUNCTIONS**

All functions of the Committee on Special Assessment Appeals including the functions of all officers, employees

and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, established a Committee on Special Assessment Appeals made up of an Assistant Corporation Counsel, the Assessor, and the Collector of Taxes to act as agents of the Commissioners as prescribed in the foregoing section. The order abolished the previously existing Committee on Special Assessment Appeals. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 47-1103 [20:746b]. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

(a) (1) When any special assessment for a public improvement, with the exception of assessments levied in condemnation proceedings, is levied by the District of Columbia upon any lot or parcel of land, notice of the levying of such assessment shall be served upon the record owner thereof in the manner herein provided, and if there be more than one record owner of such lot or parcel of land notice served on one of the owners shall be sufficient. Such notice shall be deemed to have been served when served by any of the following methods: (a) when forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided*, That valid service upon the owner shall be deemed effected under this clause (a) if such notice shall be refused by the owner and not delivered for that reason; or (b) when delivered to the person to be notified; or (c) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (d) if no such residence or place of business can be found in the District of Columbia by diligent search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (e) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of such notice cannot be effected, then if published on three consecutive days in a daily newspaper published in the District of Columbia; or (f) if by reason of an outstanding unrecorded transfer of title the name of the owner cannot, by diligent search, be ascertained, then if served on the owner of a record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of sections 47-1101 to 47-1106, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in a manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notices to a

foreign corporation shall, for the purposes of sections 47-1101 to 47-1106, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia. The cost of publication, if any, shall be paid out of the general revenues of the District. The notice herein provided for shall be in lieu of any and all other notice now required by law.

(2) In case such notice is served by any method other than personal service, a copy of such notice shall also be sent to the owner by ordinary mail.

This subsection shall apply to all special assessments for public improvements (other than assessments in condemnation proceedings) notice of which has not been served prior to June 17, 1959. (June 17, 1959, 73 Stat. 75, 76, Pub. L. 86-46, §§ 1, 2.)

AMENDMENTS

1958—Sections 1 and 2 of the act of June 17, 1959, cited to text, amended subsection (a) to read as set out in said subsection (a) (1) and (2)

PARTIAL REPEAL

Section 3 of the act of June 17, 1959, cited to text, repealed the second paragraph of subsection (a) as it appeared prior to its amendment by the same act

§ 47-1106 [20:746e]. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

TRANSFER OF FUNCTIONS

All functions of the Committee on Special Assessment Appeals including the functions of all officers, employees and subordinate agencies were transferred to the Director of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 of the Board of Commissioners dated November 10, 1952 established a Committee on Special Assessment Appeals made up of an Assistant Corporation Counsel, the Assessor, and the Collector of Taxes to act as agents of the Commissioners as prescribed in the foregoing section. The order abolished the previously existing Committee on Special Assessment Appeals including the office of the head thereof. The orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

Chapter 12.—TAXATION OF PERSONAL PROPERTY

§ 47-1201 [20:751]. Three assistant assessors to assess personal property.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor and of the Board of Assistant Assessors including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. Reorganization Order No. 20 dated November 10, 1952, abolished the Office of the Assessor and the Board of Assistant Assessors and transferred their functions to the Finance Office, Department of General Administration. The same order established in the Finance Office an Office of the Assessor headed by an Assessor, and established the Board of Assistant Assessors under the Assessor. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the appendix to Title 1.

§ 47-1202 [20:752]. Personal property to be assessed at its full value.

NOTES TO DECISIONS

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 340 U. S. 933, 71 S. Ct. 498).

LIABILITY OF ASSIGNOR

Evidence established that assignments of furniture and personal effects made by owner to an attorney who was to begin litigation for owner, which assignments were absolute in form, were to secure ultimate payments of attorney's fees, and were not a sale to attorney, and for purposes of personal property tax such furniture and personal effects belonged to assignor and attorney had only a lien on property and was not owner. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

METHOD OF DEPRECIATION

In taxpayer's suit to recover money seized in payment of personal property tax, taxpayer's evidence, comprised solely of evidence of value computed by straight line depreciation was insufficient to sustain burden of proving that assessor's valuation was incorrect. *District of Columbia v. Capital Laundry and Dry Cleaners* (D. C. Mun. App. 1954, 106 A. 2d 695).

OFFER OF PAYMENT

Where holder of liens on household furniture and personal effects offered to give collector of taxes an uncertified check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, collector was justified in refusing to stay orderly course of collection proceedings, and refusal of Collector to accept offer did not preclude sale of personalty for taxes. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

§ 47-1203 [20:753]. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.

The assessor of the District of Columbia, or his successor in office, shall annually cause to be prepared a printed blank schedule of all tangible personal property and all general merchandise or stock in trade, owned or held in trust or otherwise, subject to taxation under the provisions of sections 47-1201 to 47-1214, 47-1301 to 47-1305, 47-1701 to 47-1709, and of the classes of corporations and companies to be assessed, to which shall be appended a form in blank, setting forth that the foregoing presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be. When said schedule is ready for delivery, notice thereof shall be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in said District, and a copy of said schedule shall be delivered to any citizen applying therefor at the office of the assessor.

Every person, association, corporation, firm, or company in said District liable to taxation hereunder, and every association, company, executor, administrator, guardian, or trustee holding personal property in trust liable to taxation hereunder, shall, within thirty days after the last publication of said advertisement, as aforesaid, fill out the proper blanks in said schedule with a full and true statement, as in this section hereinbefore required, which statement shall also contain, or be verified by, a written declaration that it is made under the penalties of perjury, such declaration to be signed by, and over the address in the District of Columbia of, said person, association, corporation, firm, company, executor, administrator, guardian, or trustee making the statement required hereby, thereupon said board of personal-tax appraisers, or any one of the members thereof, shall assess said property at its fair cash value, and enter the same in the columns upon said blanks provided for that purpose, and the amount thus ascertained shall be entered upon the books for taxation for each fiscal year: *Provided*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall fail to make and deliver to the assessor or one of the said appraisers, within thirty days after the date of the last advertisement of the notice hereinbefore required, the schedule of his or its said personal property owned, held in trust, or otherwise, as provided for in this section, then the said board of personal-tax appraisers hereinbefore provided for shall without delay, from the best information they can procure, make an assessment against such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, to which they shall add twenty per centum thereof: *Provided further*, That if the said board of personal-tax appraisers be not satisfied as to the correctness of the return of personal property made by any person, firm, association, corporation, company, administrator, executor, guardian, or trustee, said board may reject said return, and said board, or any one of the members thereof, may, from the best information he or they can procure, or by making such examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just; and notice of the rejection of the return shall be given to the party interested by leaving the same at the address given in said return, and in all such cases there shall be a right of appeal from the action taken by said appraisers to the board of personal-tax appeals, or to their successors in office, within fifteen days after delivery of said notice of rejection as aforesaid: *And provided further*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall make a false statement touching the matters herein provided for, he or they shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the penalties for that offense now provided by section 22-2501. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; May 18, 1954, 68 Stat. 116, ch. 218, title X, § 1003.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by eliminating the requirement of making an affidavit on personal property tax returns. The amendment has the effect of making the signature on a return have the same effect as is the case under Federal income tax law.

The amendments provided for in the act of May 18 were effective July 1, 1954 in accordance with § 1004 of the act.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 340 U. S. 933, 71 Ct. 498).

MEASURE OF TAX

Although the district code allows dealers in business to evaluate and make personalty tax returns based on their average stock in trade for a preceding year, such "measure" of the tax is a matter of convenience, and cannot be substituted for true value of personalty of a bankrupt in the hands of its trustee at the time of the assessment. *Brown, Trustee in Bankruptcy, etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

Where district's assessment of personalty of bankrupt in trustee's hands was based upon average stock in trade of bankrupt in year prior to beginning date of fiscal year for which assessment was made, such valuation was incorrect unless the amount in dollars also represented a full and true value of such personalty in lawful money. *Id.*

METHOD OF DEPRECIATION

The fair cash value of personal property for taxation purposes is generally equivalent to its actual or market value, and cannot be arrived at by using a straight line depreciation computation based on original costs. *District of Columbia v. Capital Laundry and Dry Cleaners* (D. C. Mun. App. 1954, 106 A. 2d 695).

PERSONAL PROPERTY TAX ON BANKRUPT

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

TRUSTEE IN BANKRUPTCY MUST MAKE RETURN

A trustee in bankruptcy is such a "person" as is bound to make and deliver a return on personalty in his hands, under statute providing for taxation of all tangible personalty and all general merchandise or stock in trade owned or held in trust or otherwise. *Brown, Trustee in Bankruptcy, etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

§ 47-1206 [20: 757]. Returns to be made in July of each year.

Returns of all personal property shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property

shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in section 47-1212. (July 3, 1926, 44 Stat. 833, ch. 759, § 6; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 6; May 18, 1954, 68 Stat. 112, ch. 218, § 607.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by striking the words "other than automobiles".

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

PERSONAL PROPERTY TAX ON BANKRUPT

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

§ 47-1207 [20: 754]. Rate of taxation—Exceptions.

NOTES TO DECISIONS

DOMICILIARY SITUS OF VESSELS, SHIPS, AND BOATS

The statutory provision for general tax on all tangible personal property in District, including vessels, ships and boats, supports tax on foreign corporation's tugs, scows and launches, used by it for transportation of sand and gravel from adjoining states to storage places in District and thereafter to points of delivery in such states, on fair apportionment basis. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 340 U. S. 933, 71 S. Ct. 498).

Vessels, ships and boats, expressly included in tangible personal property subjected by statute to taxation by District of Columbia, may not be excluded merely because their domiciliary situs is not in District. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 340 U. S. 933, 71 S. Ct. 498).

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, 340 U. S. 933, 71 S. Ct. 498).

§ 47-1208 [20: 755]. Personal property exempt from taxation.

The following personal property shall be exempt from taxation.

First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Second. Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in any trade or business. For the purposes of this section, the words "household belongings" shall in-

clude all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words "trade or business" shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit.

Third. [Repealed]

Fourth. [Repealed]

Fifth. Any motor vehicle or trailer registered in accordance with the provisions of sections 40-101 to 40-105, and not comprising any part of the stock in trade of a merchant: *Provided*, That any motor vehicle or trailer comprising all or part of the stock in trade of any merchant shall continue to be taxed as provided by law: *Provided further*, That special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 10; May 18, 1954, 68 Stat. 112, ch. 218, §§ 605, 1001, 1002; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 6.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text, struck out from subparagraph Second, the phrase "(to the extent of the first \$1,000 of their value)" and inserted a comma after the word "boats". Section 8 of the same act made this amendment effective on July 1, 1958.

1954—The act of May 18, 1954, amended the second numbered paragraph by exempting household belongings and revising and extending its application. Section 1002 of the act repealed paragraphs Third and Fourth of the section previously dealing with household belongings. These amendments were made effective July 1, 1954, by § 1004 of the act.

The act of May 18, 1954, further amended the section by adding the fifth numbered paragraph which provides for the exemption of motor vehicles registered in accordance with sections 40-101 to 40-105 with certain exceptions. Section 610 of the act made this amendment effective April 1, 1955.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

PECUNIARY INTEREST

Statement by Court of Appeals in opinion that term "private gain" as used in District of Columbia statute, exempting from taxation scientific institutions not conducted for "private gain", has reference only to gain realized by any individual or stockholder, who has a "pecuniary interest" in corporation, can be considered correct only if term "pecuniary interest" is interpreted very broadly. *District of Columbia v. Sport Fishing Institute* (1958, 102 U. S. App. D. C. 277, 252 F. 2d 841).

PRIVATE GAIN

Where District of Columbia Corporation, which was organized to promote sport fishing, had no capital stock and paid no dividends, but it was organized and existed primarily, though indirectly, for financial and commercial benefit and advantage of group of fishing tackle manufacturers, it was conducted for "private gain" within meaning of District of Columbia statute exempting from taxation scientific institutions not conducted for "private gain," and therefore, it was not exempt from taxation. *District of Columbia v. Sport Fishing Institute* (1958, 102 U. S. App. D. C. 277, 252 F. 2d 841).

SCIENTIFIC INSTITUTIONS

National Wildlife Federation, being a scientific institution, incorporated under District laws and not conducted for private gain, is exempt from taxation of its personal property by District notwithstanding Federation activities in District are relatively minor when measured in terms of purely local benefits. *District of Columbia v. National Wildlife Federation* (1954, 93 U. S. App. D. C. 387, 214 F. 2d 217).

A university is "scientific institution" within Code provision exempting from taxation personalty of scientific institutions incorporated under laws of United States or of District of Columbia and not conducted for private gain. *District of Columbia v. Catholic Education Press* (1952, 91 U. S. App. D. C. 126, 199 F. 2d 176, certiorari denied 344 U. S. 896, 73 S. Ct. 276).

Evidence established that a nonprofit, nonstock corporation having corporate purpose of preparing, publishing and distributing educational, literary, scientific and religious matter was a facility of university and was exempt from taxation under Code as being a scientific institution. *District of Columbia v. Catholic Education Press* (1952, 91 U. S. App. D. C. 126, 199 F. 2d 176, certiorari denied 344 U. S. 896, 73 S. Ct. 276).

§ 47-1209 [20: 758]. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.

Real-estate taxes and personal taxes of all kinds shall hereafter be payable semiannually in equal instalments in the months of September and March. If either of said instalments on real or personal property shall not be paid within the months when the same is due, said instalments shall thereupon be in arrears and delinquent, and there shall be added and collected with said tax a penalty of 1 per centum per month upon the amount thereof for the period of such delinquency, and such instalment or instalments, with the penalties thereon, shall constitute a delinquent tax to be collected in the manner now provided by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Board of Commissioners that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Board of Commissioners may, by petition to the District Court of the United States for the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; May 18, 1954, 68 Stat. 112, ch. 218, § 606.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by striking the words "excepting the tax on motor vehicles as herein provided" from the first sentence.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

PAYMENT UNDER PROTEST

Where litigation, determining that trust companies were subject merely to tax of 4 per cent of their gross earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 per cent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 per cent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Columbia v. American Security & Trust Co.*, *District of Columbia v. Washington Loan & Trust Co.* (1953, 92 U. S. App. D. C. 33, 202 F. 2d 21).

PRIORITY OF TAX CLAIMS

"Bankruptcy", within District of Columbia Revenue Act provision that claims under Revenue Act should be a prior and preferred claim in cases where taxpayer is placed in receivership or bankruptcy, embraces only proceedings under local insolvency acts, and does not override Bankruptcy Act provision giving priority to taxes only after expenses of administration, wage claims and certain creditor expenses and barring allowance of penalties, and District's claims for sales taxes and penalties were not entitled to priority. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 2d 633).

§ 47-1210 [20: 758a]. Repealed. May 18, 1954, 68 Stat. 112, ch. 218, title VI, § 608, effective April 1, 1955.

Act of Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 3, as amended by the act of July 26, 1939, 58 Stat. 1108, ch. 367, § 4, related to the assessment of motor vehicles.

NOTES TO DECISIONS UNDER PRIOR LAW

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987).

§ 47-1211 [20: 758b]. Repealed. May 18, 1954, 68 Stat. 112, ch. 218, title VI, § 609, effective April 1, 1955.

The act of July 26, 1939, 53 Stat. 1108, ch. 367, § 4, related to the manner of assessment of motor vehicles having a situs within the District.

NOTES TO DECISIONS UNDER PRIOR LAW

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987).

§ 47-1212 [20: 759]. Mercantile establishments and carriers by water.

Dealers in general merchandise of every description shall pay to the collector of taxes of the District

of Columbia one and one-half per centum on the average stock in trade for the preceding year.

It shall be unlawful for any person or persons entering the District of Columbia subsequent to June 30th in each year and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, or engaging in the business of common carrier by vessels, ships, or boats, to conduct such business until a sworn statement of the value of such stock, vessels, ships, and boats has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unexpired portion of the fiscal year at the same rate as other personal taxes are levied: *Provided*, That this shall not apply to vessels, ships, or boats if it shall be made to appear by affidavit that any vessel, ship, or boat has been assessed for taxation and the taxes paid elsewhere.

The assessor is hereby authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons who shall fail to pay the tax required by this section within three days after beginning business shall be subject to distraint, and it shall be the duty of the assessor to place bills therefor in the hands of the collector of taxes, who shall seize sufficient of the goods of the delinquent to satisfy said tax: *Provided*, That said owner shall have the right of redemption within thirty days on payment of said tax, to which shall be added a penalty of one per centum, together with the cost of seizure. The collector shall sell such goods as are not redeemed at public auction, after advertisement for the three days preceding said sale. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 3; Apr. 28, 1904, 33 Stat. 563, ch. 1815, § 2.)

COMPILER'S NOTE

Previous editions of the code omitted the first sentence of the section. This sentence was added by the act of April 28, 1904.

CROSS REFERENCE

The rate prescribed by the first sentence of the section is no longer applicable. The rate is fixed by the Commissioners as authorized by § 47-501.

NOTES TO DECISIONS

EFFECT OF SPECIAL LEGISLATION

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987).

MEASURE OF TAX

Although the district code allows dealers in business to evaluate and make personalty tax returns based on their average stock in trade for a preceding year, such "measure" of the tax is a matter of convenience, and cannot be substituted for true value of personalty of a bankrupt in the hands of its trustee at the time of the assessment. *Brown, Trustee in Bankruptcy etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

Where district's assessment of personalty of bankrupt in trustee's hands was based upon average stock in trade of bankrupt in year prior to beginning date of fiscal year for which assessment was made, such valuation was incorrect unless the amount in dollars also represented a full and true value of such personalty in lawful money. *Id.*

RETURNED MERCHANDISE

Where merchandise was specially ordered by taxpayers for showing to an unidentified customer for which if not sold was returned to the supplier promptly on learning that the customer would not buy it, the merchandise did not become a part of the "stock in trade" of the taxpayers so as to be subject to District of Columbia statute imposing tax on stock in trade. *District of Columbia v. Bartz & King* (1957, 100 U. S. App. D. C. 142, 243 F. 2d 248).

STOCK IN TRADE

The statute imposing on dealers in general merchandise a tax of one and one-half per centum on average stock in trade levies a tax not on title, but on merchandise, which is the stock in trade. *District of Columbia v. Bartz & King* (1957, 100 U. S. App. D. C. 142, 243 F. 2d 248).

Where merchandise was held by taxpayers under memorandum arrangement permitting them to display and hold it out for sale and transfer valid legal title to customer upon delivery without prior approval of the legal owners, the merchandise was part of the "stock in trade" of the taxpayers and subject to the District of Columbia tax on average stock in trade. *Id.*

§ 47-1213 [20:769]. Board of Personal Tax Appeals—Constitution—Proceedings.

COMPILER'S NOTE

The Board of Personal Tax Appeals was superseded by the Board of Tax Appeals (now the Tax Court). See sections 47-2402 and 47-2403 of the District of Columbia Code.

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

§ 47-1301 [20:771]. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952, established under the direction and control of the Board of Commissioners the Department of General Administration headed by a Director; and transferred to the Director all functions of the Office of the Auditor and of the Office of the Collector of Taxes. Reorganization Order No. 19 established the Internal Audit Office, and transferred the function of auditing the accounts of the Collector of Taxes in respect to distraint or sale from the Auditor to the Internal Audit Officer. Reorganization Order No. 20 abolished the previously existing Office of the Collector of Taxes and transferred its functions to the Finance Office created by that order in the Department of General Administration. The Finance Office includes an Office of the Collector of Taxes. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

NOTICE TO DECISIONS

PAYMENT UNDER PROTEST

Where litigation, determining that trust companies were subject merely to tax of 4 per cent of their gross earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 per cent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 per cent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Colum-*

bia v. American Security & Trust Co., District of Columbia v. Washington Loan & Trust Co. (1953, 92 U. S. App. D. C. 33, 202 F. 2d 21).

§ 47-1302 [20: 772]. Sale of distrained goods for non-payment of taxes.

TRANSFER OF FUNCTIONS

The authority of the Commissioners of the District of Columbia to sell goods distrained for non-payment of taxes at private sale on failure to receive a sufficient bid at public sale was delegated to the Collector of Taxes, Finance Office, Department of General Administration by Reorganization Order No. 20 as amended March 19, 1953. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

§ 47-1402 [20: 965a]. Collection of personal property taxes—Neglect or refusal to pay, collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

TRANSFER OF FUNCTIONS

Reorganization Order No. 19 of November 10, 1952, established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. Under this order the functions of the Auditor described in this section relating to the auditing of accounts of the Collector of Taxes in respect to distraint or sale were transferred to the Internal Audit Officer. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

INJUNCTION TO PROHIBIT SALE

Where plaintiff in action to enjoin sale of furniture and personal effects for property taxes had only a lien on property, so that plaintiff's claims furnished no basis for saying distraint was illegal, and Collector of Taxes had given assurances that sale would be subject to outstanding liens, sale would not be enjoined. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

OFFER OF PAYMENT

Where holder of liens on household furniture and personal effects offered to give collector of taxes an uncertified check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, collector was justified in refusing to stay orderly course of collection proceedings, and refusal of Collector to accept offer did not preclude sale of personalty for taxes. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

§ 47-1407 [20: 965f]. Collection of personal property taxes—Wrongful distraints—Recoveries.

NOTES TO DECISIONS

BASIS FOR INJUNCTION

Fact that owner of household furniture and personal effects, and that holder of lien on such personalty, considered costs incurred in proceedings for collection for personal property taxes against personalty to be excessive, did not provide basis to enjoin Collector of Taxes from having personalty sold for personal property taxes, at least where there was no showing that there were no appropriate remedies at law. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

§ 47-1408 [20: 965g]. Collection of personal property taxes—Time limitations—False returns—Delinquency.

(a) Except as provided in subsection (b) of this section the taxes imposed upon personal property shall be assessed or reassessed within three years after the return was filed. For the purposes of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the taxes may be assessed at any time.

(c) Where the assessment of personal property taxes has been made within the period properly applicable thereto, such taxes may be collected by distraint or by a proceeding in court, but only if begun within three years after the date of the assessment of such taxes. (As amended July 10, 1952, 66 Stat. 543, ch. 649, § 1.)

AMENDMENTS

Section 1 of the act July 10, 1952, amended the section to provide a three-year period of limitations for the assessment of personal property taxes, in the absence of fraud or failure to file a personal property tax return. The section previously provided for a two year period of limitations but was inapplicable where a return was incorrect whether in good faith or otherwise.

NOTES TO DECISIONS

CIVIL LIABILITY OF PUBLIC OFFICIAL

If in performance of his official duties the Collector of Taxes for the District of Columbia misinterpreted the statute authorizing collection, he is not subject to a civil liability for injury resulting from such act. *Barney Goldstein and Edith Goldstein v. Guy W. Pearson, Collector of Taxes* (D. C. Mun. App. 1956, 121 A. 2d 260).

Taxpayers were not entitled to recovery of damages for injuries allegedly suffered by them as result of erroneous levy of taxes by the Collector of Taxes, since the Collector is a public official charged with the duty of collecting taxes and is not subject to civil liability for injury resulting from an alleged misinterpretation of the statute. *Id.*

DISTRAINT

The statute authorizing District of Columbia taxes against personal property to be collected by distraint if begun within three years after the date of assessment, means that no distraint or proceeding in court for collection of the taxes shall be begun after three years from the date of the assessment. *Barney Goldstein and Edith Goldstein v. Guy W. Pearson, Collector of Taxes* (D. C. Mun. App. 1956, 121 A. 2d 260).

INCORRECT RETURNS

Where District Board of Tax Appeals concluded, on basis of findings supported by evidence, that corporation's personal property tax returns for years involved in determining whether assessments of such property were barred by statute of limitations were incorrect, assessments were not barred. *District of Columbia v. Smoot Sand & Gravel Corp.* (1950, 87 U. S. App. D. C. 248, 184 F. 2d 987, certiorari denied 340 U. S. 933, 71 S. Ct. 98).

TIME FOR COMMENCEMENT OF PROCEEDINGS

Filing of a claim in bankruptcy of taxpayer for delinquent personal property taxes while constituting a "proceeding in court" within the statute authorizing taxes to be collected by distraint or by a proceeding in court begun within three years after date of assessment, terminated when the bankrupt was discharged and the case was closed as a "no asset" case and an attempt to collect the taxes by distraint and after the allowable period had passed, was unauthorized. *Barney Goldstein*

and *Edith Goldstein v. Guy W. Pearson, Collector of Taxes* (D. C. Mun. App. 1956, 121 A. 2d 260).

§ 47-1411 [20:965j]. Collection of personal property taxes—Definitions.

NOTES TO DECISIONS

TRUSTEE IN BANKRUPTCY MUST MAKE RETURN

A trustee in bankruptcy is such a "person" as is bound to make and deliver a return on personalty in his hands, under statute providing for taxation of all tangible personalty and all general merchandise or stock in trade owned or held in trust or otherwise. *Brown, Trustee in Bankruptcy etc. v. Collector of Taxes for the District of Columbia* (1957, 101 U. S. App. D. C. 200, 247 F. 2d 786).

Chapter 15.—INCOME TAX

[Sections 47-1501 to 47-1547 apply to taxable years prior to January 1, 1947.]

- Sec.
- 47-1501. Application of law.
 - 47-1502. Imposition of tax rate—Individuals—Corporations—Taxable income—Exemptions.
 - 47-1503. Net income.
 - 47-1504. Gross income and exclusions therefrom—Of individuals—Of corporations.
 - 47-1505. Deductions from gross income.
 - 47-1506. Gains or losses from sale of assets.
 - 47-1507. Exchanges.
 - 47-1508. Deductions not allowed.
 - 47-1509. Personal exemptions and credit for dependents.
 - 47-1510. Accounting periods.
 - 47-1511. Period in which items of gross income included.
 - 47-1512. Period for which deductions and credits taken.
 - 47-1513. Installment basis.
 - 47-1514. Inventories.
 - 47-1515. Individual returns—Husband and wife—Persons under disability—Fiduciaries.
 - 47-1516. Corporation returns.
 - 47-1517. Taxpayer to make return whether return form is sent or not.
 - 47-1518. Time for filing returns.
 - 47-1519. Extension of time for filing returns.
 - 47-1520. Allocation of income and deductions.
 - 47-1521. Publicity of returns—Statistics—Penalties.
 - 47-1522. Returns to be preserved.
 - 47-1523. Fiduciary returns.
 - 47-1524. Estates and trusts—Application—Computation—Net income—Different taxable year—Revocable trusts—Income to grantor—Definitions—Intangibles.
 - 47-1525. Partnerships.
 - 47-1526. Time of payment of tax—Extension—Advance payments—Fractional part of cent—Collector.
 - 47-1527. Tax a personal debt.
 - 47-1528. Information from the Bureau of Internal Revenue.
 - 47-1529. Assessor to administer.
 - 47-1530. Definition of "deficiency."
 - 47-1531. Determination and assessment of deficiency—Protest—Appeal.
 - 47-1532. Jeopardy assessment—Bond to stay collection.
 - 47-1533. Period of limitation upon assessment and collection—Waiver—Collection after assessment.
 - 47-1534. Refunds.
 - 47-1535. Closing agreements.
 - 47-1536. Compromises—Concealment of assets—Penalties.
 - 47-1537. Failure to file return.
 - 47-1538. Interest on deficiencies.
 - 47-1539. Additions to the tax in case of deficiency—Penalty for fraud.
 - 47-1540. Additions to the tax in case of nonpayment.
 - 47-1541. Time extended for payment of tax shown on return.
 - 47-1542. Penalties—"Person" defined.
 - 47-1543. Definitions.
 - 47-1544. Information return.

Sec.

- 47-1545. Withholding of tax at source.
- 47-1546. Licenses—Corporations liable—Duration—Posting — Revocation — Renewal — Penalties — "Business" defined.
- 47-1547. Compensation for services rendered for a period of five years or more.
- 47-1595a. Commissioners authorized to make rules and regulations in regard to act of March 31, 1956. [See also main volume §§ 47-1551 et seq. for latest Income and Franchise Tax Act]

§ 47-1501 [20:980]. Application of law.

The provisions of this chapter shall apply to the taxable year 1939 and succeeding taxable years, except that in the case of a taxable year beginning in 1938 and ending in 1939 the income taxable under said sections shall be that fraction of the income for the entire fiscal year equal to the number of days remaining in the fiscal year after January 1, 1939, divided by three hundred and sixty-five: *Provided, however,* That if the taxpayer's records properly reflect the income for that part of the fiscal year falling in the calendar year 1939, then the portion of the fiscal year's income taxable hereunder shall be the portion received or accrued during the calendar year 1939. (July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 1.)

PARTIAL REPEAL

[See also main volume §§ 47-1551 et seq. for latest Income and Franchise Tax Act]

Section 1 of Article I, Title I of the act July 16, 1947, [§ 47-1551] provided:

"SEC. 1. *Repeal of prior income tax act.*—The District of Columbia Income Tax Act as approved and enacted July 26, 1939, and as amended, is hereby repealed with respect to taxable years or portions thereof beginning on and after the 1st day of January 1947 for all purposes, except the following purposes in connection with taxes due or accrued under said District of Columbia Income Tax Act:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of such Act and the regulations prescribed thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by such Act;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by such Act, and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of such Act."

CROSS REFERENCE

The sections in this chapter are part of the Revenue Act of 1939, see Compiler's Notes to § 47-1401.

STATUTORY REFERENCE

Federal income tax law, see Internal Revenue Code, U. S. C., title 26, § 1-373.

§ 47-1502 [20:980a.] Imposition of tax rate—Individuals—Corporations—Taxable income—Exemptions.

(a) *Tax on individuals.*—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:

One per centum on the first \$5,000 of taxable income.

One and one-half per centum on the next \$5,000 of taxable income.

Two per centum on the next \$5,000 of taxable income.

Two and one-half per centum on the next \$5,000 of taxable income.

Three per centum on the taxable income in excess of \$20,000.

(b) *Tax on corporations.*—There is hereby levied for each taxable year upon the taxable income from District of Columbia sources of every corporation, whether domestic or foreign (except those organizations expressly exempt under paragraph (d) of this section), a tax at the rate of 5 per centum thereof: *Provided, however,* That income derived from the procurement of orders for the sale of personal property by means of telephonic communication, written correspondence, or solicitation by salesmen in the District where such orders require acceptance without the District before becoming binding on the purchaser and seller and title to such property passes from the seller to the purchaser without the District is not from District of Columbia sources: *Provided further,* That income from the sale of personal property to the United States is not from District of Columbia sources, unless the taxpayer is engaged in business in the District and such property is delivered for use within said District.

(c) *Definition of "taxable income."*—As used in this section, the term "taxable income" means the amount of the net income in excess of the credits against net income provided in section 47-1509.

(d) *Exemptions from tax.*—The following organizations shall be exempt from taxation under this title:

(1) Labor organizations;

(2) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(3) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(4) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(5) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) Civic leagues or organizations not organized for profit but operated exclusively for the promotion

of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(8) Farmers' associations organized and operated on a cooperative basis exempt from income tax under sections 101 (12) and (13) of the Internal Revenue Code (U. S. C., title 26, § 101);

(9) Banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District of Columbia;

(10) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(11) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(12) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(13) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. (July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 2; July 2, 1940, 54 Stat. 734, ch. 524, title II; Feb. 2, 1942, 56 Stat. 42, ch. 33, § 1 (a); June 22, 1942, 56 Stat. 376, ch. 433, § 1.)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

The 1940 amendment deleted a comma following the word "cemetery" and added the words "farmers' associations organized and operated on a co-operative basis exempt from income tax under section 101 (12) and (13) of the Internal Revenue Code" following the word "individual" the second time said word appears.

The act of June 22, 1942, cited to text, amended par. (b) by adding both provisos.

The act of Feb. 2, 1942, cited to text, amended par. (d) generally.

CROSS REFERENCES

Allocation of income and deductions to prevent tax evasion, § 47-1520.

Exemptions from personal property taxes, § 47-1208.

Exemptions from real estate taxes, § 47-801 et seq.

Partnerships, § 47-1525.

Returns required, § 47-1515 et seq.

Taxes on fiduciaries, trusts, and estates, § 47-1523 et seq.

Time for payment, § 47-1526.

EFFECTIVE DATE

Section 2 of act Feb. 2, 1942, cited to text, provided as follows: "The provisions of section 1 of this Act shall apply to the taxable year 1941, and succeeding taxable years, except that the provisions of subsection (q) thereof requiring licenses for corporations, and the provisions of subsection (e) thereof eliminating the requirement of payment of a fee for filing corporation returns shall become effective January 1, 1942."

Subsec. (a) of section 4 of act June 22, 1942, cited to text, subsec. (b) of which provided effective date for amendment to section 47-1546, provided as follows: "(a) The amendment made by section 1 of this Act shall be effective with respect to taxable years beginning after December 31, 1941."

NOTES TO DECISIONS

BURDEN OF PROOF

Under subsection (a) of this section, the taxing authority is warranted in treating as prima facie taxable any person quartered in the District on tax day whose status is deemed doubtful, and it is not an unreasonable burden on the individual to require him to establish domicile elsewhere if he is to escape the tax. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

A person who has at any time become domiciled in the District of Columbia has the burden of establishing a change of status upon which he relies to escape the income tax imposed by subsection (a) of this section. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

DOMICILE

Where civil service employee came to District of Columbia to live for an indefinite period of time while in government service and for no other reason and, so far as evidence showed, he had a fixed intention to return to New Hampshire, only the date being indefinite, he did not have a domicile in the District of Columbia for income tax purposes. *Collier v. District of Columbia* (1947, 82 U. S. App. D. C. 145, 161 F. 2d 649).

To ascertain the meaning of the word "domicile" as used in subsection (a) of this section, the Supreme Court would consider the congressional history of the section, the situation with reference to which it was enacted, the existing judicial precedents with which the Congress might be taken to have been familiar in at least a general way, and the unusual character of the national capital. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Exercise of political rights elsewhere cannot be considered as meant to be conclusive on the issue of taxability in the District of Columbia under subsection (a) of this

section. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

A person does not acquire a "domicile" in the District of Columbia, within subsection (a) of this section, simply by coming to the District to live for an indefinite period of time while in the government service. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Under subsection (a) of this section, Congress did not intend that a person living in the District indefinitely while in the government service should be held to have acquired a "domicile" in the District simply because he does not maintain a domestic establishment at his former place of abode. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Whether or not a person votes where he claims domicile is highly relevant, but by no means controlling on the question whether he is domiciled in the District of Columbia within subsection (a) of this section, nor is failure to vote elsewhere conclusive that domicile is in the District. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

In determining whether a person is domiciled in the District of Columbia within subsection (a) of this section, the nature of the position which brings a person to or keeps him in the service of the government is of great significance, the manner of living in the District, taken in consideration with the person's station in life, and all facts which go to show the relations retained to the former place of abode are relevant, and the question whether taxes similar in character to those laid by this section have been paid elsewhere should also be considered. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Evidence that petitioner after ending his congressional career in 1935 made a professional connection with a law firm in the District of Columbia intending to remain in Washington for a limited time only, and to spend the remainder of his life in Maine, that he maintained a room and part of his wardrobe in Portland, Me., and returned there several times a year and regularly during summer vacations, and that he paid all applicable taxes including a poll tax in Maine, and regularly voted there, showed that petitioner had his "domicile" in Maine and not in the District of Columbia, and hence he was not subject to District of Columbia income tax. *Beedy v. District of Columbia* (1942, 75 U. S. App. D. C. 289, 126 F. 2d 647).

A person in government employment does not acquire a "domicile" in the District of Columbia so as to be subject to income tax there simply by coming into the District to live for an indefinite period of time, and whatever the motive inducing change of domicile, to effect a change there must be the absence of a present intention of not residing in the District permanently or indefinitely. *Beedy v. District of Columbia* (1942, 75 U. S. App. D. C. 289, 126 F. 2d 647).

In determining whether a person is domiciled in the District of Columbia and so subject to income tax there, or in his place of origin, there must be a conjunction of physical presence and animus manendi in the new loca-

tion to bring about a domiciliary change. *Beedy v. District of Columbia* (1942, 75 U. S. App. D. C. 289, 126 F. 2d 647).

The Court in determining whether taxpayer, who was concededly domiciled in Maine until January 1, 1935, was domiciled in the District of Columbia in 1939 so as to be subject to District of Columbia income tax, would follow a ruling of the Supreme Court placing the burden on an individual quartered in the District of establishing domicile elsewhere to escape the tax, and making the question of domicile one of fixed and definite intent to return and take up his home at the place of origin. *Beedy v. District of Columbia* (1942, 75 U. S. App. D. C. 289, 126 F. 2d 647).

EVIDENCE

Evidence was insufficient to sustain finding of Board of Tax Appeals of District of Columbia that petitioners had abandoned former domicile in Massachusetts and had acquired domicile in District of Columbia and were subject to District of Columbia income taxes for the years 1939 and 1940. *Butler v. District of Columbia* (1946, 80 U. S. App. D. C. 310, 153 F. 2d 617).

On the question of the taxability of an individual's income under subsection (a) of this section the individual's testimony with regard to his intention to return to his former place of abode should be given full and fair consideration, but it is subject to the infirmity of any self-serving declaration. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

INTENTION

Persons who live in the District of Columbia, and have no fixed and definite intent to return and make their homes where they were formerly domiciled, acquire a "domicile" in the District within subsection (a) of this section, and, to keep from acquiring a domicile in the District, the intention to return must be fixed, though the date need not be, and must be unconditional, though the time may be contingent. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Subsection (a) of this section was not intended to lay a tax only on those persons having an affirmative intent to remain in the District for the rest of their days. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Under subsection (a) of this section, a person who comes to the District to enter government service, to retain his former domicile, must always have a fixed and definite intent to return and take up his home there when separated from the service, and a mere sentimental attachment will not hold the old domicile nor is residence in the District with a nearly equal readiness to go back where one came from or to any other community offering advantages upon the termination of service enough. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

To hold taxable a person who contends that he is not domiciled in the District of Columbia within subsection (a) of this section, the Board of Tax Appeals of the District need not find the exact time when the attitude and relationship of person to place which constitutes "domicile" were formed, so long as it finds they were formed before the tax day, nor need the board find just when the intent to return to the place of former abode was finally dissipated, but it is enough for the board to find that that has happened before the tax day. *District of*

Columbia v. Murphy (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

LABOR UNIONS

Under the law of the District of Columbia, an unincorporated labor union has capacity in its own name to sue and be sued in an ordinary law action and may be served with process in accordance with federal rules, 28 U. S. C. A. foll. § 723c. *Busby v. Electric Utilities Emp. Union*, 1945 (147 F. 2d 865, 79 U. S. App. D. C. 336).

An action of debt was maintainable in the District of Columbia against an unincorporated labor union in its common name where service of process was duly made on its president. *Busby v. Electric Utilities Emp. Union* (1945, 79 U. S. App. D. C. 336, 147 F. 2d 865).

PRESUMPTIONS

The place where a man lives is properly taken to be his "domicile" until facts adduced establish the contrary. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Congress must be presumed to have passed this chapter imposing tax on income from District of Columbia "sources" in the light of the established principle that unless a different legislative intention appears, the geographical source of income from the manufacture and sale or purchase and sale of goods is in the jurisdiction where the sale is made. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

QUESTION OF FACT

Under subsection (a) of this section, the question of domicile is a question of fact to be settled only by a realistic and conscientious review of the many relevant indicia of where a man's home is, and according to the established modes of proof. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

Whether a Treasury Department employee who maintained his status as a registered voter in Michigan and voted in elections and primaries there, and a chief clerk of the Personnel and Organization Division of the National Guard Bureau with offices in Washington who was born and reared in Pennsylvania and paid poll and occupational taxes and voted in Pennsylvania, were domiciled in the District of Columbia within subsection (a) of this section, presented "questions of fact" to be settled by the Board of Tax Appeals for the District, and did not call for rulings of nontaxability as a matter of law because of a decision of the United States Court of Appeals for the District of Columbia. *District of Columbia v. Murphy* (1942, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329, reversing 119 F. 2d 451, 73 App. D. C. 347, certiorari granted 61 S. Ct. 1103, 313 U. S. 556, 85 L. Ed. 1517, and 119 F. 2d 449, 73 App. D. C. 345, certiorari granted 61 S. Ct. 1104, 313 U. S. 556, 85 L. Ed. 1518).

SOURCES OF INCOME

Corporate motion picture producer receiving percentage of money paid by District of Columbia film exhibitors to producer's wholly owned subsidiary for privilege of exhibiting producer's films in District must pay income tax on money so received by virtue of subsection (b) of this section imposing tax on income of corporation from District sources, whether relation of producer and subsidiary under contract between them was that of joint adventure, lease or employment, since in any event, the money was income derived from sources within the district. *Warner Bros. Pictures v. District of Columbia* (1948, 83 U. S. App. D. C. 158, 168 F. 2d 157).

A condition that credit of purchaser be approved without District of Columbia before order solicited by sales-

man in District be filled required "acceptance without the district" before becoming binding on seller within proviso of subsection (b) of this section excluding income from sources without the District in computing income taxes. *District of Columbia v. H. D. Lee Co.* (1947, 82 U. S. App. D. C. 136, 161 F. 2d 646).

Under written contract entered into by taxpayer, which was a New Jersey corporation maintaining a branch office but no warehouse or stock of merchandise in District of Columbia, with one to act as its wholesale distributor in District, the title to goods passed from taxpayer to distributor when delivery was made by taxpayer to carrier outside of the District, so that the sales made to distributor were not required to be reported as gross income from sources within the District, notwithstanding that taxpayer agreed to pay cost of transportation and reserved the right to select the carrier. *Electric Storage Battery Co. v. District of Columbia* (1946, 81 U. S. App. D. C. 135, 155 F. 2d 867).

Unless a different legislative intention appears, geographical "source" of income from the manufacture and sale or purchase and sale of goods is in the jurisdiction where the sale is made. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

That from an economic point of view a large portion of income was attributable to activities which took place outside the District of Columbia was not material to the question whether the income came from "sources" within the District within this section taxing income from District of Columbia sources. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

TAXABLE INCOME

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

§ 47-1503 [20:980b]. Net income.

The term "net income" means the gross income of a taxpayer less the deductions allowed by this chapter. (July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 3.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1504. Gross income and exclusions therefrom— Definition—Of corporations.

(a) *Definition.*—The words "gross income," as used in this chapter include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not immune

from taxation under the Constitution, or income derived from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership, or use of, or interest in, such property; also from rent, royalties, interest, dividends, securities or transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) *Of corporations.*—In the case of any corporation, gross income includes only the gross income from sources within the District of Columbia. The proper apportionment and allocation of income with respect to sources of income within and without the District may be determined by processes or formulas of general apportionment under rules and regulations prescribed by the Commissioners.

(c) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) *Life insurance.*—Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

(2) *Annuities, and so forth.*—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter in respect to such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) of this paragraph.

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income).

(4) *Tax-free interest.*—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act

of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions.

(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement on account of such injuries or sickness.

(6) *Ministers.*—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation.

(7) *Income exempt under treaty.*—Income of any kind to the extent required by any treaty obligation of the United States.

(8) *Dividends from China trade act corporations.*—In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(9) *Income of foreign governments.*

(10) *Payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans.* (July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 4; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 4; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (b).)

AMENDMENT

The 1940 amendment added paragraph (10).

The act of Feb. 2, 1942, cited to text, amended subsec. (a) by striking words "Of Individuals" and inserting in lieu thereof "Definition".

CROSS REFERENCE

Rules and regulations, § 47-2502.

STATUTORY REFERENCE

China Trade Act, 1922, 42 Stat. 849, U. S. C., title 15, ch. 4.

PARTIAL REPEAL

See note following section 47-1501.

NOTES TO DECISIONS

DETERMINATION OF TAX

The 1939 income tax of a corporation from District of Columbia "sources" was properly determined by applying to total apportionable net income the ratio of District of Columbia sales to total sales. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

PASSAGE OF TITLE

In absence of contrary statutory definition, the source of income from sales for District of Columbia income tax purposes is the place at which title to the property passes. *District of Columbia v. Upjohn Co.* (1950, 88 U. S. App. D. C. 34, 185 F. 2d 992).

While questions of District of Columbia taxation must be determined according to District law, the question where title to goods passes for tax purposes must be determined by general rules of law where the District law provides that source of income from sales is at place at which the title passes but does not specify the place at which title passes for tax purposes. *District of Columbia v. Upjohn Co.* (1950, 88 U. S. App. D. C. 34, 185 F. 2d 992).

SOURCES WITHIN DISTRICT OF COLUMBIA

Corporate income from sales of lumber bought from mill outside the District and delivered to corporation's

customers outside the District was not "income from sources within the District of Columbia" within subsection (b) of this section, though the contracts of sale were executed or confirmed at the office of the corporation in the District. *District of Columbia v. Johnson & Wimsatt* (1947, 82 U. S. App. D. C. 81, 160 F. 2d 913).

TAXABLE INCOME

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income for the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Id.*

§ 47-1505 [20: 980d]. Deductions from gross income.

(a) *Items of deduction.*—In computing net income there shall be allowed as deductions:

(1) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) *Interest.*—All interest paid or accrued within the taxable year on indebtedness.

(3) *Taxes.*—Taxes paid or accrued within the taxable year, except—

(A) income taxes;

(B) estate, inheritance, legacy, succession, and gift taxes;

(C) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges; and

(D) taxes paid to any State or Territory on property, business, or occupation the income from which is not taxable under this chapter;

(4) *Losses in trade or business.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business, the income from which is subject to taxation under this chapter.

(5) *Losses in transactions for profit.*—Losses sustained during the taxable year and not compensated

for by insurance or otherwise, if incurred in any transaction entered into for profit, which profit would be subject to taxation under this title, though not connected with the trade or business.

(6) *Intercompany dividends*.—In the case of a corporation, the amount received as dividends from a corporation which is subject to taxation under this chapter.

(7) *Bad debts*.—Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the assessor, a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the assessor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(8) *Insurance premiums*.—All fire, tornado, and casualty insurance premiums paid during the taxable year in connection with property held for investment or business.

(9) *Depreciation*.—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate.

(10) *Charitable contributions*.—Contributions or gifts actually paid within the taxable year to or for the use of any corporation, or trust, or community fund, or foundation, maintaining activities in the District of Columbia and organized and operated exclusively for religious, charitable, scientific, literary, military, or educational purposes, no part of the net income of which inures to the benefit of any private shareholder or individual: *Provided*, That such deductions shall be allowed only in an amount which in all of the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subparagraph.

(11) *Wagering losses*.—Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(b) *Allocation of deductions*.—In the case of a taxpayer, other than an individual, the deductions allowed in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District and taxable under this title to a nonresident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the District shall be determined by processes or formulas of general apportionment under rules and regulations to be prescribed by the Commissioners. The so-called charitable contribution deduction allowed by subparagraph (10) of paragraph (a) of this section shall be allowed whether or not connected with income from sources within the District.

(c) *Corporations to file return of total income*.—A corporation shall receive the benefits of the deductions allowed to it under this chapter only by filing or causing to be filed with the assessor a true and ac-

curate return of its total income received from all sources, whether within or without the District. (July 26, 1939, 53 Stat. 1089, ch. 367, title II, § 5; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (c).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended par. (5) of subsec. (a) by the insertion of the word "profit" between the words "which would".

COMPILER'S NOTE

The word "which" has been inserted in the paragraph headed "Losses in transactions for profit" to make it correspond to the preceding paragraph.

NOTES TO DECISIONS

ACQUISITION COST AS BASIS

If property is acquired while income tax law is in effect, cost of its acquisition is logical starting point for computing depreciation allowance, but if property is acquired prior to existence of tax law, there is no logical reason for taking cost as primary figure. *Connecticut Inv. Corp. v. Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

BASIS OF DEPRECIATION

"Basis" of depreciation for income tax purposes means the starting point or primary figure. *Connecticut Inv. Corp. v. Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

BURDEN OF PROOF

Burden of establishing deductibility of all profits of a closely held corporation for income tax purposes over a period of years by payment thereof in salaries to stockholders was even greater than burdens which a taxpayer undertakes in an ordinary tax case when he attacks findings of assessor and those of Board of Tax Appeals. *Connecticut Ave. Cafe v. District of Columbia* (1948, 83 U. S. App. D. C. 272, 169 F. 2d 304).

CONCLUSIVENESS OF FINDINGS

Finding by Board of Tax Appeals that salaries paid by closely held corporation to its stockholders amounting to virtually all of the total profits during the tax years 1942, 1943, and 1944 were excessive for purpose of determining amount deductible in computing corporation's income taxes for such years was not clearly erroneous. *Connecticut Ave. Cafe v. District of Columbia* (1948, 83 U. S. App. D. C. 272, 169 F. 2d 304).

CONSTRUCTION WITH OTHER LAWS

Provision in instruction for computation of District of Columbia income tax that it is "permissible" to compute depreciation on same basis as used in federal law, shows that subsection (a) (9) of this section was not construed as requiring that basis be the same as under 26 U. S. C. §§ 113 (b), 114. *Connecticut Inv. Corp. v. Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

REASONABLE DEPRECIATION

Subsection (a) (9) of this section uses "reasonable" as referring to basis for depreciation as well as rate thereof. *Connecticut Inv. Corp. v. Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

VALUE AS BASIS

Where taxpayer acquired property before enactment of this chapter, basis for computing depreciation thereof for 1941 and 1942 income tax purposes was value as of January 1, 1939, rather than original cost, regardless of basis applicable under federal income tax law. *Connecticut Inv. v. Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

§ 47-1506 [20: 980e]. Gains or losses from sale of assets.

(a) No gain or loss from the sale or exchange of a capital asset shall be recognized in the computation of net income under this chapter. For the purposes of this chapter, "capital assets" means property held by the taxpayer for more than two years (whether

or not connected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(b) Gains or losses from the sale or exchange of property other than a capital asset shall be treated in the same manner as other income or deductible losses, and the basis for computing such gain or loss shall be the cost of such property or, if acquired by some means other than purchase, the fair market value thereof at the date of acquisition. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 6.)

PARTIAL REPEAL

See note following section 47-1501.

NOTES TO DECISIONS

CAPITAL ASSETS

Evidence sustained determination that bonds and stocks acquired by corporation at time of its organization in 1930 were capital assets and that neither gains nor losses resulting from sale in 1942 were allowable in computing income tax. *Henry J. Robb, Inc. v. District of Columbia* (1945, 80 U. S. App. D. C. 246, 152 F. 2d 283).

QUESTIONS OF FACT

Where taxpayer, organized for purpose of lending money on real estate, acquired realty by foreclosure, question whether profits on sales of realty were taxable under this section as income derived from capital assets or as ordinary income was one of fact. *Real Estate Mortgage & Guaranty Corporation v. District of Columbia* (1944, 78 U. S. App. D. C. 390, 141 F. 2d 361).

SALE OF REALTY

Where substantially all of corporation's income for many years accrued from purchase and sale of real estate mortgage notes and from interest collected thereon, profits resulting from sale of realty acquired as result of default in payment of indebtedness represented by mortgage notes were taxable as ordinary "income". *Wardman Real Estate Inv. Corp. v. District of Columbia* (1945, 80 U. S. App. D. C. 246, 152 F. 2d 285).

Where corporation was in business of lending money on realty, managing and renting property, collecting rents, selling insurance, and such other matters as generally pertain to real estate business, profits from sale of realty acquired through foreclosure of mortgages were taxable as ordinary "income". *Henry J. Robb, Inc. v. District of Columbia* (1945, 80 U. S. App. D. C. 246, 152 F. 2d 283).

SALES OF SECURITIES

The assessment by the District of Columbia of income tax on gains which taxpayers derived from sales of securities was proper where the securities had been held less than two years. *Garrett v. District of Columbia* (1947, 81 U. S. App. D. C. 374, 159 F. 2d 457, certiorari denied Mar. 10, 1947, 330 U.S. 835, 67 S. Ct. 971)

VALIDITY OF LIMITATION PERIOD

In defining capital assets as property held by taxpayer for more than two years and providing that the sale or exchange of property other than the capital assets shall be treated in the same manner as other income or deductible losses, the purpose of Congress was to distinguish between investment and speculation and this section cannot be held invalid on the ground that the two-year limitation is unreasonable. *Garrett v. District of Columbia* (1947, 81 U. S. App. D. C. 374, 159 F. 2d 457, certiorari denied Mar. 10, 1947, 330 U.S. 835, 67 S. Ct. 971)

§ 47-1507 [20: 980f]. Exchanges.

Where property is exchanged for other property, the property received in exchange for the purpose of

determining the gain or loss shall be treated as the equivalent of cash to the amount of its fair market value; but when in connection with the reorganization, merger, or consolidation of a corporation a taxpayer receives, in place of stock or securities owned by him, new stock or securities of the reorganized, merged, or consolidated corporation, no gain or loss shall be deemed to occur from the exchange until the new stock or securities are sold or realized upon and the gain or loss is definitely ascertained, until which time the new stock or securities received shall be treated as taking the place of the stock and securities exchanged; provided such reorganization, merger, or consolidation is a "reorganization" within the meaning of the term "reorganization" as defined in section 112 (g) of the Federal Revenue Act of 1936. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 7.)

PARTIAL REPEAL

See note following section 47-1501.

STATUTORY REFERENCE

Section 112 (g) of the Federal Revenue Act of 1936 is found as § 112 (g) of the Internal Revenue Code, U. S. C., title 26, § 112 (g).

§ 47-1508 [20: 980g]. Deductions not allowed.

(a) *General rule.*—In computing net income no deductions shall be allowed in any case in respect to—

- (1) personal, living, or family expenses;
- (2) any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;
- (3) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; and
- (4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(b) *Holders of life or terminable interest.*—Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections (l) and (m) of section 23 of the Federal Revenue Act of 1936 as amended) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 8.)

COMPILER'S NOTE

The act of July 26, 1939, read "subsections (l) and (m) of section 23 of the Federal Revenue Act of 1926 as amended." The Revenue Act of 1926 contained no § 23. The Federal Revenue Act of 1936 does contain a § 23

which contains subsections (l) and (m) and these subsections contain subject matter which is pertinent. See U. S. C., title 26, § 23, Internal Revenue Code. The various Federal Revenue Acts from 1928 on contained a § 23, similar to that found in the 1936 act. For these reasons the words "Act of 1926" have been changed to read "Act of 1936."

CROSS REFERENCE

Allowance for depreciation, see § 47-1505 (9).

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1509 [20:980h]. Personal exemptions and credit for dependents.

(a) *Credits*.—There shall be allowed to individuals the following credits against net income:

(1) *Personal exemption*.—In the case of a single person or married person not living with husband or wife, a personal exemption of \$1,000; in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500; a husband and wife living together shall receive but one personal exemption, the amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

(2) *Credit for dependents*.—\$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(b) *Change of status*.—If the status of the taxpayer, insofar as it affects personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned under rules and regulations prescribed by the Commissioners, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional portion of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(c) *In return for fractional part of year*.—In the case of a return made for a fractional part of a year, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bears to twelve months. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 9.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1510 [20:980i]. Accounting periods.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the assessor does clearly reflect the income. If

the taxpayer's annual accounting period is other than a fiscal year as defined in section 47-1543 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income-tax return, his income shall be computed, for the purposes of this title on the basis of the same calendar or fiscal year as in such Federal income-tax return. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 10.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1511 [20:980j]. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47-1510, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included, in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 11.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1512 [20:980k]. Period for which deductions and credits taken.

The deductions and credits provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 12.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1513 [20:980l]. Instalment basis.

(a) *Dealers in personal property*.—Under regulations prescribed by the Commissioners, a person who regularly sells or otherwise disposes of personal property on the instalment plan may return as income therefrom in any taxable year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed bears to the total contract price.

(b) *Sales of realty and casual sales of personalty*.—In the case of (1) a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding

\$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price, the income may, under regulations prescribed by the Commissioners, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) *Change from accrual to instalment basis.*—If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the instalment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other disposition of property made in any prior year shall not be excluded.

(d) *Gain or loss upon disposition of instalment obligations.*—If an instalment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect to which the instalment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This paragraph shall not apply to the transmission at death of instalment obligations if there is filed with the assessor, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment in such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 13.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1514 [20: 980m]. Inventories.

Whenever in the opinion of the assessor the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the assessor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 14.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1515 [20: 980n]. Individual returns—Husband and wife—Persons under disability—Fiduciaries.

(a) *Requirement.*—The following individuals shall each make a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income.

(b) *Husband and wife.*—If a husband and wife living together have an aggregate net income for the taxable year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(c) *Persons under disability.*—If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) *Fiduciaries.*—For returns to be made by fiduciaries, see section 47-1523. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 15; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (d).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended subsec. (a) by striking out the words "under oath" in the second line.

CROSS REFERENCES

Extension of time to file, § 47-1519.

Partnership returns, § 47-1525.

Penalty for failure to file return, § 47-1537.

§ 47-1516 [20: 980o]. Corporation returns.

Every corporation not expressly exempt from the tax imposed by this chapter shall make a return which shall state specifically the items of its gross income and the deductions and credits allowed by this chapter, and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporation of whose

business or property they have custody and control. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 16; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (e).)

PARTIAL REPEAL

See note following section 47-1501.

CROSS REFERENCES

Extension of time to file, § 47-1519.
Rules and regulations, § 47-2502.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended section by eliminating the requirement of payment of \$25 fee for filing corporation returns.

EFFECTIVE DATE OF AMENDMENT

Section 2 of act of Feb. 2, 1942, cited to text, provided as follows: "The provisions of section 1 of this Act shall apply to the taxable year 1941, and succeeding taxable years, except that the provisions of subsection (q) thereof requiring licenses for corporations, and the provisions of subsection (e) thereof eliminating the requirement of payment of a fee for filing corporation returns shall become effective January 1, 1942."

§ 47-1517 [20:980p]. Taxpayer to make return whether return form is sent or not.

Blank forms of returns for income shall be supplied by the assessor. It shall be the duty of the assessor to obtain an income tax return from every taxpayer who is liable under the law to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 17.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1518 [20:980q]. Time for filing returns.

All returns of income for the preceding taxable year shall be made to the assessor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year shall be made on or before the 15th day of the fourth month following the close of such fiscal year, unless such fiscal year has expired in the calendar year 1939 prior to the approval of this chapter, in which event returns shall be made on or before the 15th day of the third month following the approval of this chapter. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 18; Mar. 2, 1940, 54 Stat. 38, ch. 37, § 1.)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1940—The 1940 amendment deleted the word "March" and inserted in lieu thereof the word "April," and deleted the word "third" and inserted in lieu thereof the word "fourth" as it now appears.

§ 47-1519 [20:980r]. Extension of time for filing returns.

The assessor may grant a reasonable extension of time for filing income returns whenever in his judgment good cause exists and shall keep a record of every such extension. Except in case of a taxpayer who is abroad, no such extension shall be granted for more than six months, and in no case for more than one year. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 19; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (g).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

The act of Feb. 2, 1942, cited to text, amended section by striking out the last sentence which read as follows: "In the event time for filing a return is deferred, the taxpayer is hereby required to pay, as a part of the tax, an amount equal to 6 per centum per annum on the tax ultimately assessed from the time the return was due until it is actually filed in the office of the assessor."

§ 47-1520 [20:980s]. Allocation of income and deductions.

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District of Columbia, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the assessor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act (U. S. C., title 49, §§ 1-27 and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said act. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 20.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1521 [20:980t]. Publicity of returns—Statistics—Penalties.

(a) *Secrecy of returns.*—Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return under this chapter.

(b) *When copies may be furnished.*—Neither the original nor a copy of the return desired for use in litigations in court shall be furnished where the District of Columbia is not interested in the result whether or not the request is contained in an order of the court: *Provided*, That nothing herein shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$1.

(c) *Reciprocal exchange of information with the United States and the several States.*—Notwithstanding the provisions of this section, the assessor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect income tax returns, file with the assessor or may furnish to such officer or representative a copy of any such income tax returns provided the United States or such State grant substantially similar privileges to the assessor or his representative, or to the proper officer of the District charged with the administration of this chapter.

(d) *Publication of statistics.*—Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or of the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the assessor may assist in the collection of such delinquent taxes.

(e) *Penalties for violation of this section.*—Any offense against the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or imprisonment for six months, or both, in the discretion of the court. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 21; Aug. 7, 1939, 53 Stat. 1248, ch. 546.)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENT

1939—The August 7, 1939, amendment amended paragraph (c) by inserting the words "the United States or" both times they now appear, the word "such" in the phrase "any such income tax returns" as it now appears and added the letter "s" to word "return" in said phrase.

CROSS REFERENCE

Secrecy of returns, § 47-2504 and notes.

§ 47-1522 [20: 980u]. Returns to be preserved.

Reports and returns received by the assessor under the provisions of this chapter shall be preserved for six years and thereafter until the assessor orders them to be destroyed. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 22.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1523 [20: 980v]. Fiduciary returns.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) Every estate the net income of which for the taxable year is \$1,000 or over;

(5) Every trust the net income of which for the taxable year is \$100 or over;

(6) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income.

(b) *Joint fiduciaries.*—Under such regulations as the Commissioners may prescribe, a return by one of two or more joint fiduciaries and filed in the office of the assessor shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) *Law applicable to fiduciaries.*—Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 23; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (h).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended subsec. (a) by striking out pars. (4) and (5) and inserting in lieu thereof pars. (4), (5), and (6). The principal change made was changing the net income of a trust subject to taxation from \$1,000 to \$100.

CROSS REFERENCES

Returns generally, § 47-1515 et seq.

Rules and regulations, § 47-2502.

§ 47-1524 [20: 980w]. Estates and trusts—Application—Computation—Net income—Different taxable year—Revocable trusts—Income to grantor—Definitions—Intangibles.

(a) *Application of tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates, or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation of tax.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in paragraph (e) of this section (relating to revocable trusts) and paragraph (f) of this section (relating to income for benefit of the grantor).

(c) *Net income.*—The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and

the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (2) of this section in the same or any succeeding taxable year;

(2) in the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(3) there shall be allowed as a deduction (in lieu of the deductions for charitable contributions authorized by section 47-1505 (a) (10)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating a trust, is during the taxable year paid or permanently set aside for the purposes and in the manner provided in section 47-1505 (a) (10) or is to be used exclusively for the purposes enumerated in section 47-1505 (a) (10).

(d) *Different taxable year.*—If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under subparagraph (1) of paragraph (c) of this section, to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within or with his taxable year.

(e) *Revocable trusts.*—Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor.

(f) *Income for benefit of grantor.*—Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest

in the disposition of such part of the income may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 47-1505 (a) (10); relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(g) *Definition of "in discretion of grantor."*—As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

(h) *Income from intangible personal property held by trust.*—Income from intangible personal property held by any trust company or by any national bank situated in the District (with or without an individual trustee, resident or nonresident) in trust to pay the income for the time being to, or to accumulate or apply such income for the benefit of any nonresident of the District, shall not be taxable hereunder if—

(1) such beneficial owner or cestui que trust was at the time of the creation of the trust a nonresident of the District; and

(2) the testator, settlor, or grantor was also at the time of the creation of the trust a nonresident of the District.

(i) *Credits against net income.*—There shall be allowed to an estate the same personal exemption as is allowed to a single person under section 47-1509 (a), and a trust shall be allowed a credit of \$100 against net income. (July 26, 1939, 53 Stat. 1097, ch. 367, title II, § 24; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (i).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 24, 1942, amended section by addition of subsec. (i).

§ 47-1525 [20: 980x]. Partnerships.

(a) *Partners only taxable.*—Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity, and no income tax shall be assessable hereunder upon the net income of any partnership. All such income shall be assessable to the individual partners; it shall be reported by such partners as individuals upon their respective individual income returns; and it shall be taxed to them as individuals along with their other income at the rate and in the manner herein provided for the taxation of income received by individuals. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership

ending within the taxable year upon the basis of which the partner's net income is computed.

(b) *Partnership return.*—Every partnership shall make a return for each taxable year stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the names and the addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 25.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1526 [20: 980y]. Payment of tax—Extension—Advance payments—Fractional part of cent—Collector.

(a) *Time of payment.*—One-half of the total amount of the tax imposed by this chapter shall be paid on the 15th day of April following the close of the calendar year and the remaining one-half of the tax shall be paid on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of the tax imposed by this chapter shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of said tax shall be paid on the 15th day of the tenth month following the close of the fiscal year, except a fiscal year which expired in the calendar year 1939 prior to the approval of this chapter, in which event the tax shall be paid on the 15th day of the third month following the approval of this chapter.

(b) *Extension of time for payments.*—At the request of the taxpayer the assessor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: *Provided, however,* That where the time for filing a return is extended for a period exceeding six months under the provisions of section 47-1519, the assessor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) *Voluntary advance payment.*—A tax imposed by this chapter, or any instalment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(d) *Fractional part of cent.*—In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) *Payment to collector and receipts.*—The tax provided under this chapter shall be collected by the collector and the revenues derived therefrom shall be turned over to the treasury of the United States for the credit to the District in the same manner as other revenues are turned over to the United States

treasury for the credit to the District. The collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 26; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 2; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (j).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended subsection (b) by deleting last sentence and inserting in lieu thereof the proviso.

1940—The 1940 amendment amended subsection (a) to read as it now appears. This subsection in the 1939 act provided that the entire tax be paid on the 15th day of March following the close of the calendar year or the 15th day of the third month following the close of the taxpayer's fiscal year.

§ 47-1527 [20: 980z]. Tax a personal debt.

Every tax imposed by this chapter, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District, and shall be entitled to the same priority as other District taxes, and the taxes levied hereunder and the interest and penalties thereon shall be collected by the collector of taxes in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 27.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1528 [20: 980aa]. Information from the Bureau of Internal Revenue.

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed by this chapter. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 28.)

PARTIAL REPEAL

See note following section 47-1501.

CROSS REFERENCE

Secrecy of information, see § 47-2504.

§ 47-1529 [20: 980bb]. Assessor to administer.

(a) *Duties of assessor.*—The assessor is hereby required to administer the provisions of this chapter. The assessor shall prescribe forms identical with those utilized by the Federal Government, except to the extent required by differences between this chapter and its application and Federal Act and its application. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income tax law so that computations of income for purposes of this chapter shall be, as nearly as practicable, identical with the calculations required for Federal income tax purposes. As soon as practicable after the return is filed the assessor shall examine it and shall determine the correct amount of the tax.

(b) *Statements and special returns.*—Every taxpayer liable to any tax imposed by this chapter shall

keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioners from time to time may prescribe. Whenever the assessor judges it necessary he may require any taxpayer, by notice served upon him, to make a return, render under oath such statements, or keep such records as he deems sufficient to show whether or not such taxpayer is liable to tax under this chapter and the extent of such liability.

(c) *Examination of books and witnesses.*—The assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the assessor may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than \$300. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia.

(d) *Return by assessor.*—If any person fails to make and file a return at the time prescribed by law or by regulations made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return, the assessor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the assessor shall be prima facie good and sufficient for all legal purposes. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 29.)

PARTIAL REPEAL

See note following section 47-1501.

CROSS REFERENCE

Rules and regulations, see § 47-2502.

NOTES TO DECISIONS

ARBITRARY AND UNREASONABLE

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

CONSTRUCTION

The provision of this section that the assessor shall apply as far as practicable the administrative and judicial interpretations of the federal income tax law so that computations of income for purposes of this chapter should be as nearly as practicable identical with the calculations required for federal income tax purposes would apply only to those parts of the federal law which were like parts of this chapter. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

EXHAUSTING ADMINISTRATIVE REMEDY

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

INTERPRETATIONS UNDER FEDERAL LAW

The provision in this section that the assessor shall apply as far as practicable the administrative and judicial interpretations of the federal income tax law so that computations of income for purposes of this chapter should be as nearly as practicable identical with the calculations required for federal income tax purposes did not apply to computation of income tax of corporation where no identical calculations would result and where Congress had omitted from this chapter provisions which it had placed in the federal income tax law. *Eastman Kodak Co. v. District of Columbia* (1942, 76 U. S. App. D. C. 339, 131 F. 2d 347).

§ 47-1530 [20: 980cc]. Definition of "deficiency."

Definition of "deficiency."—As used in this chapter in respect of a tax imposed by this chapter "deficiency" means—

(1) the amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) if no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise

repaid in respect of such tax. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 30.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1531 [20: 980dd]. Determination and assessment of deficiency—Protest—Appeal.

If a deficiency in tax is determined by the assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the assessor, and a final decision thereon shall be made as quickly as practicable. Any deficiency in tax then determined to be due shall be assessed and paid, together with any addition to the tax applicable thereto, within ten days after notice and demand by the collector. The taxpayer may appeal from such assessment to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2412. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 31.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1532 [20: 980ee]. Jeopardy assessment—Bond to stay collection.

(a) *Authority for making.*—If the assessor believes that the collection of any tax imposed by this chapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.*—The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, the collection of which is stayed, at the time at which, but for this section such amount would be due. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 32.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1533 [20: 980ff]. Period of limitation upon assessment and collection—Waiver—Collection after assessment.

(a) *General rule.*—Except as provided in paragraph (b) of this section—

(1) The amount of income taxes imposed by this chapter shall be assessed within two years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of two years after the return is filed. This subparagraph shall not apply in the case of a corporation unless—

(A) such written request notifies the assessor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

(B) the dissolution is in good faith begun before the expiration of such twelve-month period; and

(C) the dissolution is completed.

(3) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

(4) For the purposes of subparagraphs (1), (2), and (3), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) *False return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *Waiver.*—Where before the expiration of the time prescribed in paragraph (a) for the assessment of the tax, both the assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (A) within three years after the assessment of the tax or (B) prior to the expiration of any period for collection agreed upon in writing by the assessor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 33.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1534 [20: 980gg]. Refunds.

Except as otherwise provided in section 47-1531 of this title, where there has been an overpayment of

any tax imposed by this chapter, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the time the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of the refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim was filed, then during the two years immediately preceding the allowance of the refund. Every claim for refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the assessor. If the assessor disallows any part of a claim for refund, he shall send to the taxpayer by registered mail a notice of the part of the claim so disallowed. Within ninety days after the mailing of such notice, the taxpayer may file an appeal with the Board of Tax Appeals for the District of Columbia, in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2412. The remedy provided to the taxpayer under this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law; but no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court if the taxpayer has elected to file an appeal in accordance with this section. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 34.)

PARTIAL REPEAL

See note following section 47-1501.

CROSS REFERENCE

Tax refunds generally, see § 47-1017 et seq

§ 47-1535 [20: 980hh]. Closing agreements.

The assessor is authorized to enter into an agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Commissioners within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 35.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1536 [20: 980ii]. Compromises — Concealment of assets—Penalties.

(a) *Authority to make.*—Whenever in the opinion of the commissioners there shall arise with respect of any tax imposed under this chapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever the commissioners may compromise such tax.

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section

or offer of such compromise or in connection with any closing agreement under this chapter or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(c) *Of penalties.*—The commissioners shall have the power for cause shown to compromise any penalty arising under this chapter. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 36.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1537 [20: 980jj]. Failure to file return.

In case of any failure to make and file a return required by this chapter, within the time prescribed by law or prescribed by the commissioners in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 37.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1538 [20: 980kk]. Interest on deficiencies.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month from the date prescribed for the payment of the tax (or, if the tax is paid in instalments, from the date prescribed for the payment of the first instalment) to the date the deficiency is assessed.

(b) *If extension granted for payment of deficiency.*—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum per month shall be added and collected on such unpaid amount from the date of the expiration of the period of the

extension until it is paid. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 38; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (k); July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1952—The act of July 10, 1952, decreased the interest rates specified in the section from one per centum to one-half of one per centum.

1942—The act of Feb. 2, 1942, amended section by addition of subsec. (b).

§ 47-1539 [20: 980U]. Additions to the tax in case of deficiency—Penalty for fraud.

(a) *Negligence*.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(b) *Fraud*.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 39.)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1540 [20: 980mm]. Additions to the tax in case of nonpayment.

(a) *Tax shown on return*.—

(1) *General rule*.—Where the amount determined by the taxpayer as the tax imposed by this chapter, or any instalment thereof, or any part of such amount or instalment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one-half of 1 per centum a month from the date prescribed for its payment until it is paid.

(2) *If extension granted*.—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any instalment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47-1541 is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subparagraph (1) of this paragraph, interest at the rate of one-half of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency*.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47-1538, or under section 47-1539, or any addition to the tax in case of delinquency provided for in section 47-1537 is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one-half of 1 per centum a month from

the date of such notice and demand until it is paid.

(c) *Fiduciaries*.—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of one-half of 1 per centum per month in lieu of the interest provided in subparagraphs (a) and (b) of this section. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 40; July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1952—The act of July 10, 1952, decreased the interest rates specified in the section from one per centum to one-half of one per centum.

§ 47-1541 [20: 980nn]. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any instalment thereof, is extended under the authority of section 47-1526 (b), there shall be collected, as a part of such amount, interest thereon at the rate of one-half of 1 per centum per month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 41; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (l); July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1952—The act of July 10, 1952, decreased the interest rate specified in the section from one per centum to one-half of one per centum.

1942—The act of Feb. 2, 1942, amended section by substituting words "section 47-1526 (b)" for "section 47-1526 (c)".

§ 47-1542 [20: 980oo]. Penalties—"Person" defined.

(a) *Negligence*.—Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply information, who fails to pay such tax, to make such return, to keep such records, or supply such information, at the time or times required by law or regulations, or who makes a false or fraudulent return, shall, upon conviction thereof (in addition to other penalties provided by law), be fined not more than \$300 for each and every such failure or violation, and each and every day that such failure continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the police court of the District on information by the corporation counsel or one of his assistants in the name of the District.

(b) *Wilful violation*.—Any person required under this chapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this chapter, who wilfully refuses to pay or collect such tax, to make such returns, to keep such records, or to supply such

information, or who wilfully attempts in any manner to defeat or evade the tax imposed by this chapter shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with costs of prosecution.

(c) *Definition of "person."*—The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 42; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (m).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, cited to text, amended subsec. (a) by striking out words "or collect" following words "to pay", by adding words "or who makes a false or fraudulent return" between words "regulations, shall", by striking out words "of Columbia" following word "District", and by adding words "one of" between words "or his assistants".

NOTES TO DECISIONS

ATTEMPTS

The crime of willfully attempting to defeat and evade income taxes due to the District of Columbia was complete when attempt was complete. *U. S. v. Rick* (D. C. Mun. App. 1946, 48 A. 2d 614).

Information, charging that defendants knowingly and unlawfully attempted to defeat and evade a large part of income taxes due and owing by them to the District of Columbia by false and fraudulent income tax returns and by concealing and attempting to conceal from the taxing authorities the true gross income and net taxable income received by defendants, charged an offense under subsection (b) of this section providing that anyone who willfully refuses to pay income taxes shall be guilty of a misdemeanor and be fined not more than \$10,000, and not under subsection (a) of this section providing that one who negligently fails to pay income tax shall be fined not more than \$300. *U. S. v. Rick* (D. C. Mun. App. 1946, 48 A. 2d 614).

FALSE OR FRAUDULENT RETURNS

"Fraudulent" in subsection (a) of this section includes an intent and involves a subject-matter of which some one is to be deprived and there is no real difference between a "fraudulent return" and a "willful attempt to evade a tax." *Rick v. U. S.* (1947, 82 U. S. App. D. C. 101, 161 F. 2d 897).

A "false return" in subsection (a) of this section may be merely incorrect due to negligence or some other cause lacking intent, or not involving a tax, and is not necessarily willful or an intent to evade a tax. *Rick v. U. S.* (1947, 82 U. S. App. D. C. 101, 161 F. 2d 987).

PENALTY

Subsection (b) of this section imposing a penalty of not more than \$10,000 or imprisonment for not more than one year, or both for willfully attempting to defeat or evade income tax, clearly states both the offense and the maximum penalty, and the maximum is all that any one need know concerning the penalty for violation of a law. *Rick v. U. S.* (1947, 82 U. S. App. D. C. 101, 161 F. 2d 897).

PROSECUTION

One who willfully attempts to evade District of Columbia income tax by filing false and fraudulent return is subject to prosecution by the United States Attorney and not by the Corporation Counsel. *Rick v. U. S.* (1947, 82 U. S. App. D. C. 101, 161 F. 2d 897).

§ 47-1543 [20: 980pp]. Definitions.

For the purpose of this chapter and unless otherwise required by the context—

(1) The word "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The word "taxpayer" means any person subject to a tax imposed by this title.

(3) The word "partnership" includes a syndicate, group, pool, joint adventure, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a trust or estate or a corporation; and the word "partner" includes a member in such a syndicate, group, pool, joint adventure, or organization.

(4) The word "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The word "domestic" when applied to a corporation other than an association, means created under the law of United States applicable to the District of Columbia; and when applied to an association or partnership means having the principal office or place of business within the District of Columbia.

(6) The word "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(7) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(8) The word "individual" means all natural persons, whether married or unmarried; and also all trusts, estates, and fiduciaries acting for other persons; it does not include corporations or partnerships acting for or in their own behalf.

(9) The words "taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed under this chapter. The term "taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter, the period for which such return is made.

(10) The words "fiscal year" mean an accounting period of twelve months and ending on the last day of any month other than December.

(11) The words "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(12) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling, or commercial activity in the District of Columbia; and include the performance of the functions of a public office.

(13) The word "stock" includes a share in an association, joint-stock company, or insurance company.

(14) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(15) The words "United States" when used in a geographical sense include only the States, the Ter-

ritories of Alaska and Hawaii, and the District of Columbia.

(16) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its stockholders or members whether such distribution be made in cash, or any other property, other than stock of the same class in the corporation. It includes such portion of the assets of a corporation distributed at the time of dissolution as are in effect a distribution of earnings.

(17) The word "include," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(18) The word "Commissioners" means the Commissioners of the District of Columbia or their duly authorized representative or representatives.

(19) The word "District" means the District of Columbia.

(20) The word "assessor" means the assessor of the District of Columbia or his duly authorized representative or representatives.

(21) The word "collector" means the collector of taxes of the District of Columbia. (July 26, 1939, 53 Stat. 1106, ch. 367, title II, § 43; Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (n).)

PARTIAL REPEAL

See note following section 47-1501.

AMENDMENTS

1942—The act of Feb. 2, 1942, amended par. (20) by addition of words after "District of Columbia."

§ 47-1544. Information returns.

Every person subject to the jurisdiction of the District in whatever capacity, acting, including receivers or mortgagors of real or personal property, fiduciaries, partnerships, and employers making payment of dividends, interest, rent, premiums, annuities, compensations, remunerations, emoluments, or other income to foreign corporations, shall render such returns thereof to the assessor as may be prescribed by rules and regulations of the Commissioners. (July 26, 1939, ch. 367, title II, § 44, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (o).)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1545. Withholding of tax at source.

Whenever the Commissioners shall deem it necessary, in order to satisfy the District's claim for income tax payable by any foreign corporation, they may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the collector of taxes an amount not in excess of 5 per centum of all income payable by such person to a foreign corporation. After such foreign corporation shall have filed all returns required under this title, and the same shall have been audited, the collector of taxes shall refund any overpayment to the taxpayer. (July 26, 1939, ch. 367, title II, § 45, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (p).)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1546. Licenses — Corporations liable—Duration—Posting — Revocation — Renewal — Penalties — "Business" defined.

(a) Every corporation (except those expressly exempt from the tax imposed by this chapter) engaging in or carrying on any business, or receiving income from District of Columbia sources, shall obtain a license so to do on or before the 1st day of January of each year: *Provided*, That such license for the calendar year 1942 may be obtained within sixty days after February 2, 1942. Applications for licenses shall be upon forms prescribed and furnished by the Commissioners, and each application shall be accompanied by a fee of \$10.

(b) All licenses issued under this section shall be in effect for the duration of the calendar year in which issued, unless revoked as herein provided, and shall expire at midnight of the 31st day of December of each year. No license may be transferred to any other corporation.

(c) All licenses granted under this section to corporations having an office or place of business in the District must be conspicuously posted in the office or on the premises of the licensee, and said license shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspection.

(d) Every corporation not having an office or place of business in the District but which receives income from District sources or engages in or carries on any business in the District by or through an employee or agent shall procure the license provided by this title. Every employee or agent of any such corporation shall carry either the license or a certificate from the assessor that the license has been obtained, which license or certificate shall be exhibited to the police or other officers duly authorized to inspect the same. Such certificate shall be in such form as the assessor shall determine, and shall be furnished, without charge, by the assessor, upon request. No employee or agent of a corporation not having an office or place of business within the District shall engage in or carry on any business in the District for or on behalf of such corporation unless such corporation shall have first obtained a license, as provided by this section.

(e) The Commissioners may, after hearing, revoke any license issued hereunder for failure of the licensee to file a return or corrected return within the time required by this chapter, or to pay any installment of tax when due thereunder.

(f) Licenses shall be renewed for the ensuing calendar year upon application as provided in subsection (a) of this section. No license shall be renewed if the taxpayer has failed or refused to pay any tax or installment thereof, or penalties thereon, imposed by this chapter: *Provided, however*, That the Commissioners, in their discretion, for cause shown, may, on such terms or conditions as they may determine or prescribe, waive the provisions of this subsection.

(g) Any corporation receiving income from District sources or engaging in or carrying on any business in the District without first having obtained

a license so to do, and any person engaging in or carrying on any business for or receiving income from District sources on behalf of a corporation not having a license so to do, shall, upon conviction thereof, be fined not more than \$300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the police court of the District on information by the corporation counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation not having the license required hereby.

(h) The term “business”, as used in this section, shall include the carrying on or exercising for gain or economic benefit, either direct or indirect, any trade, business, or commercial activity in the District: *Provided, however,* That such term shall not include the procurement of orders for the sale of personal property by means of telephonic communication, written correspondence, or solicitation by salesmen in the District where such orders require acceptance without the District before becoming binding on the purchaser and seller and title to such property passes from the seller to the purchaser without the District; nor the mere submission of bids or the mere acceptance of contracts for the sale of personal property to the United States. (July 26, 1939, ch. 367, title II, § 43, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (q), amended June 22, 1942, 56 Stat. 376, ch. 433, §§ 2, 3.)

PARTIAL REPEAL

See note following section 47-1501

AMENDMENTS

1942—Section 2 of act June 22, 1942, amended subsec. (g) by adding the proviso.
Section 3 of act June 22, 1942, amended subsec. (h) by adding the proviso.

EFFECTIVE DATES OF AMENDMENTS

Section 2 of act Feb. 2, 1942, cited to text, provided as follows: “The provisions of section 1 of this Act shall apply to the taxable year 1941, and succeeding taxable years, except that the provisions of subsection (q) thereof requiring licenses for corporations, and the provisions of subsection (e) thereof eliminating the requirement of payment of a fee for filing corporation returns shall become effective January 1, 1942.”
Subsec. (b) of section 4 of act June 22, 1942, cited to text, subsec. (a) of which provided effective date for amendment to section 47-1502, provided as follows: “(b) The amendments made by sections 2 and 3 of this Act shall be effective as of January 1, 1942.”

§ 47-1547. Compensation for services rendered for a period of five years or more.

In the case of compensation (a) received for personal services rendered by an individual in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of such individual for any taxable year beginning after December 31, 1939, the tax attributable to such com-

pensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period. (July 26, 1939, ch. 367, title II, § 47, as added Feb. 2, 1942, 56 Stat. 46, ch. 33, § 1 (r).)

PARTIAL REPEAL

See note following section 47-1501.

§ 47-1551. Repeal of sections 47-1501 to 47-1547, and retention of certain provisions thereof.

SEPARABILITY CLAUSE

1956—Section 602 of the act of March 31, 1956, Public Law 460, ch. 154, parts of which were classified to sections 47-1551c, 47-1557b, 47-1564a, 47-1567a, 47-1567b, 47-1567d, 47-1586f, 47-1586g, 47-1586j, 47-1589, 47-1589a, 47-1589c, 47-1589d, 47-1591, 47-1591a, 47-1591b, and 47-1591f, provides as follows: “If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.”

NOTES TO DECISIONS

APPORTIONMENT FORMULA

Apportionment formula contained in 1948 regulations prescribed by Commissioners of District of Columbia to govern computation of franchise tax, was valid. *District of Columbia v. Radio Corporation of America* (1956, 98 U. S. App. D. C. 119, 232 F. 2d 376).

§ 47-1551c. General definitions.

* * * * *

(u) The term “dependent” means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, and whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$500.

- (1) A son or daughter of the taxpayer, or a descendant of either.
- (2) A stepson or stepdaughter of the taxpayer.
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer.
- (4) The father or mother of the taxpayer, or an ancestor of either.
- (5) A stepfather or stepmother of the taxpayer.
- (6) A son or daughter of a brother or sister of the taxpayer.
- (7) A brother or sister of the father or mother of the taxpayer.
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.
- (9) Repealed.

The terms “brother” and “sister” include a brother or sister of the half-blood. For the purposes of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term “dependent” does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States.

(v) The term “head of a family” means an individual who maintains in one household one or more dependents as defined in paragraph (u) of

this section. The personal exemption for dependents shall be allowed to the head of a family for dependents in excess of one dependent.

(w) The term "wages" means wages as defined in section 3401 (a) of the Internal Revenue Code of 1954.

(x) The term "payroll period" means payroll period as defined in section 3401 (b) of the Internal Revenue Code of 1954.

(y) The term "employer" means employer as defined in section 3401 (d) of the Internal Revenue Code of 1954.

(z) The term "employee" shall apply only to individuals having a place of abode or residing or domiciled within the District at a time a tax is required to be withheld by an employer, and to every other individual who maintained a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The term "employee" shall include an officer of a corporation, but shall not include any elective officer of the Government of the United States or any officer or employee in the legislative branch of the Government of the United States whose compensation is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officer of the executive branch is domiciled within the District on the last day of the taxable year. (July 16, 1947, 61 Stat. 332, Art. I, Title I, § 4; May 3, 1948, 62 Stat. 206, ch. 246, § 1; May 27, 1949, 63 Stat. 129, ch. 146, Title IV, §§ 401, 402; as amended Mar. 31, 1956, 70 Stat. 68, ch. 154, § 2 (a), (b), and (c).)

POPULAR NAME

1956—Section 1, of the act of March 31, 1956, 70 Stat. 68, provides as follows: "That this Act may be cited as the 'District of Columbia Revenue Act of 1956'."

AMENDMENTS

1956—Section 2 (a) of the act of March 31, 1956, cited to text, amended subsection "u" by inserting after "was received from the taxpayer" a comma and adding the words beginning with "and" and ending with "\$500".

1956—Section 2 (c) of said Act amended the section by adding subsections "v", "w", "x", "y", and "z".

APPLICABILITY TO OFFICERS OR AGENCIES OF DISTRICT

Section 603 of the act of March 31, 1956, Public Law 460, ch. 154, a part or parts of which are classified to sections 47-1551c, 47-1557b, 47-1564a, 47-1567a, 47-1567b, 47-1567d, 47-1586f, 47-1586g, 47-1586j, 47-1589, 47-1589a, c and d, 47-1591, and 47-1591f, provides as follows: "Wherever any officer or agency of the District, other than the Commissioners of the District of Columbia, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan No. 5 of 1952."

EFFECTIVE DATE OF AMENDMENTS

1956—Section 19, of the act of March 31, 1956, 70 Stat. 68, makes all amendments therein contained applicable to taxable years beginning after December 31, 1955, unless otherwise therein provided.

REPEAL

1956—Section 2 (b) of the act of March 31, 1956, repealed paragraph (9) of subsection "u".

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

NOTES TO DECISIONS

BUSINESS OR COMMERCIAL ACTIVITY

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within statute imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone v. District of Columbia* (1952, 91 U. S. App. D. C. 140, 198 F. 2d 601).

ENGAGING IN BUSINESS

Where oil company had offices and a warehouse in nearby Virginia, and company's salesmen sold motor fuel to dealers in District of Columbia, and company trucked the product to local stations in the District, and company stored tires, batteries, and other accessories at its plant in Maryland, neither the company nor its salesmen had office, warehouse or place of business in District and consequently under the statute the company was not subject to local corporate franchise tax on privilege of carrying on business and receiving income from sources within the District, notwithstanding that dealer with place of business in District was a wholesaler of such merchandise and that company used a telephone answering service in the District. *District of Columbia v. Cities Service Oil Company* (1958, 103 U.S. App. D.C. 332, 258 F. 2d 426).

Oil company would not be subjected to District of Columbia corporate franchise tax on theory that company by asserting, in application for motor fuel importer's license, its name and a district address in the blank space calling for name and address of its "resident general agent", was estopped to deny that it had a representative in the District. *Id.*

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporation's products in district, and salesmen from other offices of corporation solicited sales in district, and corporation shipped substantial quantities of goods to customers in district, corporation was engaged in commercial activity and was in business in district and had an office and officer in district and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 U. S. App. D. C. 15, 204 F. 2d 29).

FIFTH AMENDMENT

The Fifth Amendment to the constitution does not prohibit income taxation of dividends on amounts distributed in corporate liquidation to the extent that they represent corporate earnings on theory that such a tax taxes a stockholder on earnings of another entity, or on theory that it arbitrarily and capriciously provides a different treatment from that afforded stockholders who sell their stock to third persons. *H. A. Berliner and R. B. Frank v. District of Columbia* (1958, 103 U.S. App. D.C. 351, 258 F. 2d 651, certiorari denied 357 U.S. 937).

LIQUIDATION DIVIDENDS

Amounts distributed in complete liquidation of a corporation were properly includable in the stockholders' gross income as a dividend under District of Columbia income tax code section providing that dividends include any distribution made by a corporation out of its earnings, profits or surplus whenever earned by the corporation and whether made in cash and whether distributed

prior to, during, upon, or after liquidation or dissolution of the corporation. *H. A. Berliner and R. B. Frank v. District of Columbia* (1958, 103 U.S. App. D.C. 351, 258 F. 2d 651, certiorari denied 357 U.S. 937).

§ 47-1554. Exempt organizations.

NOTES TO DECISIONS

EXCEPTIONS TO EXEMPTIONS

A non-profit corporation which operated cafeterias in federal government buildings and recreation facilities in federal parks was not exempt from franchise, motor vehicle, and personal property taxes by the District of Columbia, even though none of the earnings of the corporation inured to the benefit of any individual. *Government Services Incorporated v. District of Columbia* (1951, 88 U. S. App. D. C. 360, 189 F. 2d 662, certiorari denied 342 U. S. 828, 72 S. Ct. 51).

§ 47-1557a. Gross income and exclusions therefrom.

(9) *Payments to veterans and others.*—(A) Payments, under any of the laws relating to veterans, of benefits made to or on account of a beneficiary, to the extent such payments are not subject to taxation under the Internal Revenue Code of 1954.

(B) Amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service to the extent such amounts are excluded from gross income under section 104 (a) (4) of the Internal Revenue Code of 1954. [42 U. S. C. 104 (a) (4).]

(15) *Social Security benefits.*—Insurance benefit payments received under section 402 (a), (b), (c), (d), (e), (f), (g), (h), (i), of title 42 U. S. C. (Sept. 4, 1957, 71 Stat. 605, Pub. L. 85-281, §§ 1, 3.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text amended subsection (b) (9) to read as above set out and added paragraph 15 to subsection (b). Section 8 of the same act made the above mentioned amendments applicable to taxable years beginning after December 31, 1956.

NOTES TO DECISIONS

TAXABLE INCOME

Under District of Columbia Income and Franchise Tax Act, providing that gain realized from sale or exchange of property held by taxpayer for more than two years is not taxable income, gain attributable to sale of license was not taxable to taxpayer, which sold its radio and television station, together with license for operation thereof, on July 28, 1950, where taxpayer's predecessor in title had been issued a station construction permit in 1946, notwithstanding fact that current station license had been issued in May of 1950. *District of Columbia v. General Teleradio, Inc.* (1956, 97 U. S. App. D. C. 280, 230 F. 2d 830).

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the district, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a

supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the district, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

TRADE OR BUSINESS

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within statute imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone v. District of Columbia* (1952, 91 U. S. App. D. C. 140, 198 F. 2d 601).

§ 47-1557b. (a) Deductions allowed.

(9) *Medical, dental, and so forth, expenses of individuals.*—Expenses in the case of residents, paid by the taxpayer during the taxable year, not compensated for by insurance or otherwise, for the medical care of the taxpayer, his spouse, or dependents as defined in this article. The term "medical care", as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases, or for the purpose of effecting healthier function of the body (including amounts paid for accident or health insurance): *Provided, however,* That a taxpayer may deduct only such expenses as exceed 5 per centum of his adjusted gross income, or 5 per centum of the aggregate adjusted gross income in the case of husband and wife filing joint return: *And provided further,* That the maximum deduction for the taxable year shall not exceed \$2,500 in the case of a husband and wife filing a joint return, or \$1,250 in the case of all other residents.

(13) *Optional standard deduction and irrevocable election.*—In lieu of the foregoing deductions, any resident may elect to deduct for the taxable year an optional standard deduction of 10 per centum of the adjusted gross income or \$1,000, which ever is lesser; in the case of joint returns filed by husband and wife living together, the combined standard deduction shall be limited to 10 per centum of the adjusted gross income of both, or \$1,000, whichever is lesser; in the case of separate returns by husband and wife living together, the standard deduction of each spouse shall be limited to 10 per centum of the adjusted gross income of that spouse or \$500, whichever is lesser, but the standard deduction shall be allowed to neither if the net income of one of the spouses is determined by itemizing the deductions. The option provided in this paragraph shall not be permitted on any return filed for any period less than a full calendar or full fiscal year.

The election to claim the optional standard deduction, or to itemize deductions, shall be irrevocable for the taxable year for which the election is made. (As amended Mar. 31, 1956, 70 Stat. 69, ch. 154, §§ 3, 4; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 4.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text, amended subsection (a) (13) to read as above set out. Section 8 of the same act made the amendment applicable to taxable years beginning after December 31, 1956.

1956—Section 3 of the act of March 31, 1956, cited to text, amended the two provisos in subparagraph (a) (9) to read as above set out.

Section 4 of the same act also amended subparagraph (a) (13) to read as above set out.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

§ 47-1564a. Requirement—Who must file.

Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this article, and such other information for the purpose of carrying out the provisions of this article as the Assessor may require:

(a) *Residents and nonresidents.*—Every nonresident of the District receiving income subject to tax under this article and every resident of the District, except fiduciaries, when—

(1) his gross income for the taxable year exceeds \$1,000, if single, or if married and not living with husband or wife; or

(2) his gross income for the taxable year exceeds \$2,000 if married and living with husband or wife; or

(3) his gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47-1574 to 1574e, exceeds \$5,000, regardless of the amount of his gross income; or

(4) the combined gross income for the taxable year of a husband and wife living together exceeds \$2,000 in the aggregate, or the combined gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47-1574 to 1574e, exceeds \$5,000 regardless of the amount of their gross income.

(b) *Fiduciaries.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) for—

(1) every individual for whom he acts having a gross income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) every individual for whom he acts having a gross income for the taxable year of \$2,000 or over, if married and living with husband or wife;

(3) every estate for which he acts, the gross income of which for the taxable year is \$1,000 or over;

(4) every trust for which he acts, the gross income of which for the taxable year is \$1,000 or over.

(c) *Joint fiduciaries.*—A return by one of two or more joint fiduciaries filed with the Assessor shall be sufficient compliance with the provisions of section 47-1564a (b).

(d) If any resident or nonresident or any fiduciary is unable to make his own return, the return shall be made by his duly authorized agent.

(e) (1) *Corporations.*—Every corporation engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47-1580 to 47-1580b. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or are engaged in or carrying on the trade or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

(2) Affiliated corporations shall file separate returns unless permitted by the Assessor to file consolidated returns.

(f) *Unincorporated businesses.*—Every unincorporated business engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47-1580 to 47-1580b having a gross income of more than \$10,000, regardless of whether or not it has a net income. Such returns shall be made by the taxpayer or taxpayers liable for the payment of the tax.

(g) *Partnerships.*—Every partnership, other than partnerships subject to the taxes imposed by sections 47-1574 to 47-1574e on unincorporated businesses, engaged in any trade or business, or receiving income from sources within the District. There shall be included in such return the names and addresses of the individuals who would be entitled to share in the net income of the partnership, if distributed, and the amount of distributive share of each individual. (July 16, 1947, 61 Stat. 341, ch. 258, Art. I, Title V, § 2; May 27, 1949, 63 Stat. 131, ch. 146, Title IV, § 411; as amended Mar. 31, 1956, 70 Stat. 69, ch. 154, § 5.

AMENDMENTS

1956—Section 5 of the act of March 31, 1956, cited to text, amended subsections (a) and (b) to read as above set out.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

§ 47-1567a. Personal exemptions and credit for dependents.

There shall be allowed to residents the following credits against net income:

(a) (1) An exemption of \$1,000 for a single person or a married person not living with husband or wife.

(2) An additional exemption of \$500 for the taxpayer if he has attained the age of sixty-five before the close of his taxable year, and an additional exemption of \$500 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has

no gross income and is not the dependent of another taxpayer.

(3) An additional exemption of \$500 for the taxpayer if he is blind at the close of his taxable year, and an additional exemption of \$500 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this subsection, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) An exemption of \$2,000 for a head of a family or a married person living with husband or wife. A husband and wife living together shall, in addition to the exemptions for age and for blindness allowed by subparagraphs (a) (2) and (a) (3) above, receive but one personal exemption of \$2,000, but if such husband or wife make separate returns, the personal exemption of \$2,000 shall be divided equally between them.

(c) An exemption of \$500 for each dependent, as defined in this article, whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$500, except that the exemption shall not be allowed in respect of a married dependent who has made a joint return with his spouse for the taxable year beginning in such calendar year.

(d) If the status of a taxpayer changes during the taxable year with respect to his marital status the amount allowed under subsection (b) of this section shall be apportioned in accordance with the number of months before and after such change. For the purposes of this subsection, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

(e) Beginning with the first taxable year to which this article is applicable and in succeeding taxable years, the amounts allowed under subsections (a), (b), and (c) of this section shall be prorated to the day of death in the final return of a decedent dying before the end of the taxable year, and as of the date of death the personal exemption is terminated and not extended over the remainder of the taxable year.

(f) In the case of a return made for a fractional part of a taxable year, the personal exemptions and credits for dependents shall be reduced, respectively, to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bear to twelve months. (As amended Mar. 31, 1956, 70 Stat. 70, ch. 154, § 6; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85-281, § 2.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text, amended subsections (a) and (b) to read as above set out. Section 8 of the same act made the amendments applicable to taxable years beginning after December 31, 1956.

1956—Section 6 of the act of March 31, 1956, cited to text, amended the section to read as above set out.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1567b. Imposition and rates of tax.

(a) There is hereby annually levied and imposed for each taxable year upon the taxable income of every resident a tax at the following rates:

Two and one-half per centum on the first \$5,000 of taxable income.

Three per centum on the next \$5,000 of taxable income.

Three and one-half per centum on the next \$5,000 of taxable income.

Four per centum on the next \$5,000 of taxable income.

Four and one-half per centum on the next \$5,000 of taxable income.

Five per centum on the taxable income in excess of \$25,000.

(b) **OPTIONAL METHOD OF COMPUTATION.**—In lieu of the method of computation prescribed by subsection (a), a resident reporting on a cash basis for any full calendar year who does not claim credit for taxes paid by him to any State or Territory of the United States or political subdivision thereof under the provisions of section 47-1567d on the whole or any part of his income for such calendar year and, if his gross income for such calendar year is \$5,000 or less, and is derived solely from salaries, wages, dividends, and interest, may elect to pay the tax in accordance with a table to be included in regulations.

(1) In applying such table, to determine whether the taxpayer is entitled to the personal exemption of \$1,000 or \$2,000, his status on the last day of his taxable year, as defined in this article, shall control.

(2) An individual not living with husband or wife on the last day of the taxable year for the purposes of this article, shall be considered as a single person.

(3) The election given by this section as to the computation of tax due shall be considered to have been made if the taxpayer files the return prescribed for such computation and such election shall be final and irrevocable.

(4) If the taxpayer for any taxable year has filed a return computing his tax without regard to this section, he may not thereafter elect for such year to compute his tax under this section.

(5) This section shall not apply to any fiduciary or to any married resident living with husband or wife at any time during the taxable year whose spouse files a return and computes the tax without regard to this section or section 47-1557b (a) (13), as amended.

(6) If a husband and wife living together file separate returns, each shall be treated as a single person for the purposes of this section. (July 16, 1947, 61 Stat. 344, ch. 258, Art. I, Title VI, § 3; May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 413, May 18, 1954, 68 Stat. 117, ch. 218, Title XII, § 1201; as amended Mar. 31, 1956, 70 Stat. 70, 71, ch. 154, §§ 7, 8; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 5.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text, struck out the figure \$10,000 and changed it to \$5,000. Section 8 of the same act made the amendment applicable to taxable years beginning after December 31, 1956.

1956—Section 7 of the act of March 31, 1956, cited to text, amended the section to read as set out under subsection (a).

Section 8 of the same act added the new matter set out under subsection (b).

1954—The act of May 18, 1954, increased the individual income-tax rates 1 percent in each bracket, to 2½ percent, 3 percent, 3½ percent and 4 percent respectively.

EFFECTIVE DATE OF AMENDMENTS

1956—See note under section 47-1551c.

Section 1202 of the act of May 18, 1954, made amendments applicable to taxable years beginning after December 31, 1953.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

1954—Commissioners' authority to make regulations as to act of May 18, 1954, see § 43-1618.

§ 47-1567d. Credit against tax allowed residents.

(a) The amount of tax payable under this title by an individual who, although a resident of the District of Columbia as defined in this article, was nevertheless a bona fide domiciliary of any State or Territory of the United States or political subdivision thereof during the taxable year shall be reduced by the amount required to be paid by such individual as income or intangible personal property taxes, or both, for such taxable year to the State, Territory, or political subdivision thereof of which he was a domiciliary. The Assessor may require proof, satisfactory to him, of the payment of such income or intangible personal property taxes: *Provided, however,* That the credit provided for by this section shall not be allowed against any tax imposed under sections 47-1574 to 47-1574e.

(b) CREDIT FOR TAX WITHHELD ON WAGES.—The amount deducted and withheld as tax under this article during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the tax imposed by this article, for taxable years beginning in such calendar year. If more than one taxable year begins in such calendar year such amount shall be allowed as a credit against the tax for the last taxable year so beginning. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, Title VI, § 5; as amended Mar. 31, 1956, 70 Stat. 71, ch. 154, § 9.)

AMENDMENTS

Section 9 of the act of March 31, 1956, cited to text, amended the section by designating it as subsection (a) and by adding the new matter set out under subsection (b).

CROSS REFERENCE

1956—For provisions regarding separability clause of the Act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1571. Taxable income defined.

NOTES TO DECISIONS

APPORTIONMENT FORMULA

Under District of Columbia statute imposing for privilege of carrying on a trade or business within the District a franchise tax at five per cent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

ARBITRARY AND UNREASONABLE

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

COMMISSIONERS REGULATION VALID

Under the District of Columbia statutes imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

CONGRESSIONAL INTENT

The District of Columbia statute imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Under District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that com-

missioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

ENGAGING IN BUSINESS

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporations' products in district, and salesmen from other offices of corporation solicited sales in district, and corporation shipped substantial quantities of goods to customers in district, corporation was engaged in commercial activity and was in business in district and had an office and officer in district and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 App. D. C. 15, 204 F. 2d 29).

Where foreign corporation entered into contracts with factors in District of Columbia to sell corporation's products for it, and factors had authority to sell products only in ordinary course of business, and agreed actively to promote sale of such products, and to sell only at prices and upon terms specified by such corporation, and to make monthly accountings to the corporation, factors were agents or representatives having offices within District, and corporation was therefore not exempt under statute from paying District franchise tax. *Lever Bros. Co. v. District of Columbia, District of Columbia v. Lever Bros. Co.* (1953, 92 U. S. App. D. C. 147, 204 F. 2d 39).

EXHAUSTING ADMINISTRATIVE REMEDY

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

FEDERAL REGULATIONS NOT BINDING

Under the District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the federal income tax law. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

IN GENERAL

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

MEASURE OF TAX

Where finding of District of Columbia Tax Court that

interest received by resident realty corporation on note which was given by nonresidents who purchased realty within District and which was secured by deed of trust on such realty was income from sources without District and not subject to District of Columbia franchise tax was not supported by consideration of whether the interest represented income fairly attributable to any trade or business carried on within District, finding was improper in view of statute providing for franchise tax on income derived from sources within District, defined *inter alia* as income fairly attributable to any trade or business carried on within District. *District of Columbia v. Virginia Hotel Co.* (1953, 92 App. D. C. 186, 204 F. 2d 390).

§ 47-1571a. Imposition and rate of tax.

NOTES TO DECISIONS

APPORTIONMENT

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co. v. District of Columbia* (1958, 103 U. S. App. D. C. 102, 255 F. 2d 180).

APPORTIONMENT FORMULA

Under District of Columbia statute imposing for privilege of carrying on a trade or business within the District a franchise tax at five per cent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

ARBITRARY AND UNREASONABLE

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

COMMISSIONERS REGULATION VALID

Under the District of Columbia statutes imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

CONGRESSIONAL INTENT

The District of Columbia statute imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Under District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

EXHAUSTING ADMINISTRATIVE REMEDY

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

FEDERAL REGULATIONS NOT BINDING

Under the District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the Federal income tax law. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

§ 47-1574. Definition of unincorporated business.

NOTES TO DECISIONS

AUTHORITY OF TAX COURT

The District of Columbia Tax Court has authority to uphold imposition of correct tax, upon right taxpayer, in correct entity, where only error found by that court is in capacity in which taxpayer is described. *Arthur Jordan Foundation v. District of Columbia* (1955, 95 U. S. App. D. C. 71, 219 F. 2d 503).

BROKERAGE AND SECURITIES BUSINESS

Under statute levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income derived by taxpayers, who conducted a brokerage and securities business, from underwriting a portion of an issue of new shares of stock by selling shares at higher market price to customers than price to taxpayers as underwriters, was a profit from purchase and sales of securities by an underwriter and not a commission paid for personal services rendered to customers. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

DIVIDENDS AND PROFITS

Under statute levying tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and if capital was not a material income-producing factor, dividends and profits derived by brokerage and securities firm from trading securities registered in firm name constituted material income produced by the firm's capital. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

ENGAGING IN BUSINESS

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within statute imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone v. District of Columbia* (1952, 91 U. S. App. D. C. 140, 198 F. 2d 601).

EVIDENCE, SUFFICIENCY

Evidence was sufficient to warrant finding of District of Columbia Board of Tax Appeals that more than 80 percent of gross income was derived from a partner's own personal service, so as to bring partnership within statute excluding from franchise tax on unincorporated business a partnership in which more than 80 percent of gross income is derived from personal services actually rendered by partners. *District of Columbia v. Adair* (1952, 90 U. S. App. D. C. 368, 196 F. 2d 603).

EXEMPTION DISALLOWED

Where total salaries paid to engineering employees, "free lance" draftsmen, and independent engineering firms ranged between 55 percent and 40 percent of gross income of sole proprietor of business engaged in certain branch of field of civil engineering, proprietor was not entitled to exemption from District of Columbia franchise tax on ground that more than 80 percent of gross income had been derived from personal services actually rendered by proprietor. *District of Columbia v. Ghent* (1955, 95 U. S. App. D. C. 103, 220 F. 2d 210).

INCOME FROM CAPITAL

Under statutes levying a tax upon income of unincorporated businesses if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, the statutory exemption with respect to income from capital did not require that capital not be used in the business but only that it not be a material income-producing factor. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

PERSONAL SERVICES BY PARTNERS

Under statute which excludes a partnership from franchise tax imposed upon unincorporated business in which more than 80 percent of the gross income is derived from the personal services actually rendered by the individual members of the partnership, percentage of gross income paid to salaried employees does not control in determining what services are the basis of the income. *District of Columbia v. Adair* (1952, 90 U. S. App. D. C. 368, 196 F. 2d 603).

TENANTS IN COMMON

In franchise tax case, District of Columbia Tax Court could, upon consideration of record as a whole, properly conclude, from nature of acts of individuals and their conduct in relation to property which they had acquired and held as tenants in common, that gain from its sale had been received by them, as individuals, and not by an unincorporated business. *District of Columbia v. Ben Lar Associates et al.* (1958, 104 U.S. App. D.C. 258, 261 F. 2d 376).

TRADING IN SECURITIES

Under statute levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income from sale of unlisted securities, purchased by taxpayers from a dealer at a discount, constituted a profit on a purchase and sale as a merchant and not a commission for services as an agent in buying securities for customers. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

§ 47-1574a. Taxable income defined.

NOTES TO DECISIONS

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

§ 47-1574b. Imposition and rate of tax.

NOTES TO DECISIONS

BROKERAGE AND SECURITIES BUSINESS

Under statute levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income derived by taxpayers, who conducted a brokerage and securities business, from underwriting a portion of an issue of new shares of stock by selling shares at higher market price to customers than price to taxpayers as underwriters, was a profit from purchase and sales of securities by an underwriter and not a commission paid for personal services rendered to customers. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

DIVIDENDS AND PROFITS

Under statute levying tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and if capital was not a material income-producing factor, dividends and profits derived by brokerage and securities firm from trading securities registered in firm name constituted material income produced by the firm's capital. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

INCOME FROM CAPITAL

Under statutes levying a tax upon income of unincorporated businesses if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, the statutory exemption with respect to income from capital did not require that capital not be used in the business but only that it not be a material income-producing factor. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

TRADING IN SECURITIES

Under statute levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income from sale of unlisted securities, purchased by taxpayers from a dealer at a discount, constituted a profit on a purchase and sale as a merchant and not a commission for services as an agent in buying securities for customers. *Rohrbaugh & Co. v. District of Columbia* (1955, 96 U. S. App. D. C. 207, 225 F. 2d 264).

TRUST AN UNINCORPORATED BUSINESS

Where Tax Assessor levied franchise tax on trust doing business within area, on basis that such trust was corporation, and where, on appeal from such determination, District of Columbia Tax Court decided that trust was not so taxable as corporation, but rather that it was taxable as an unincorporated business, Tax Court decision was not subject to objection that, after having held trust not taxable as corporation, it had no power to impose different tax in lieu of one appealed. *Arthur Jordan Foundation v. District of Columbia* (1955, 95 U. S. App. D. C. 71, 219 F. 2d 503).

§ 47-1574c. Exemption.

NOTES TO DECISIONS

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

§ 47-1574d. By whom payable.

NOTES TO DECISIONS

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

§ 47-1574e. Partners only taxable.

NOTES TO DECISIONS

NATURE OF TAX

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within statute allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux. v. Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

§ 47-1580. Purpose of article.

NOTES TO DECISIONS

APPORTIONMENT

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia

and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co. v. District of Columbia* (1958, 13 U. S. App. D. C. 102, 255 F. 2d 180).

APPORTIONMENT FORMULA

Under District of Columbia statute imposing for privilege of carrying on a trade or business within the District a franchise tax at five percent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Apportionment formula, contained in 1948 regulations prescribed by Commissioners of District of Columbia to govern computation of franchise tax, was valid. *District of Columbia v. Radio Corporation of America* (1956, 98 U. S. App. D. C. 119, 232 F. 2d 376).

ARBITRARY AND UNREASONABLE

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

ASSESSMENT

Where corporation protesting assessment of District of Columbia business privilege tax also raised before Board of Tax Appeals for District of Columbia the question of amount of assessment, and on review it was decided that corporation was subject to the tax, the case would be remanded to District of Columbia Tax Court as successor to the Board for consideration of question of amount of assessment. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 App. D. C. 15, 204 F. 2d 29).

AUTHORITY OF TAX COURT

The District of Columbia Tax Court has authority to uphold imposition of correct tax, upon right taxpayer, in correct entity, where only error found by that court is in capacity in which taxpayer is described. *Arthur Jordan Foundation v. District of Columbia* (1955, 95 U. S. App. D. C. 71, 219 F. 2d 503).

COMMISSIONERS REGULATION VALID

Under the District of Columbia statutes imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not prop-

erly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

CONGRESSIONAL INTENT

The District of Columbia statute imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Under District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

ENGAGING IN BUSINESS

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporation's products in District, and salesmen from other offices of corporation solicited sales in District, and corporation shipped substantial quantities of goods to customers in District, corporation was engaged in commercial activity and was in business in District and had an office and officer in District and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 App. D. C. 15, 204 F. 2d 29).

Regulation prescribed by District commissioners, allocating to district gross income from sale principally secured, negotiated, or effected by owners, employees, agents, officers and branches of corporation located in District regardless of place of passage of title, was valid under statute imposing a tax on net income from District of Columbia sources of foreign and domestic corporations for privilege of carrying on or engaging in trade or business within District and of receiving income from sources within District. *Lever Bros. Co. v. District of Columbia, District of Columbia v. Lever Bros. Co.* (1953, 92 App. D. C. 147, 204 F. 2d 39).

EXHAUSTING ADMINISTRATIVE REMEDY

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

FEDERAL REGULATIONS NOT BINDING

Under the District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the federal income tax law. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

MEASURE OF TAX

Under statute imposing a tax on net income from District of Columbia sources of foreign and domestic corporations for privilege of carrying on or engaging in trade

or business within District and of receiving income from sources within District, and containing provisos, measure of tax is not limited to sale in which title passes in District. *Lever Bros. Co. v. District of Columbia, District of Columbia v. Lever Bros. Co.* (1953, 92 App. D. C. 147, 204 F. 2d 39).

Where finding of District of Columbia Tax Court that interest received by resident realty corporation on note which was given by nonresidents who purchased realty within District and which was secured by deed of trust on such realty was income from sources without District and not subject to District of Columbia franchise tax was not supported by consideration of whether the interest represented income fairly attributable to any trade or business carried on within District, finding was improper in view of statute providing for franchise tax on income derived from sources within District, defined *inter alia* as income fairly attributable to any trade or business carried on within District. *District of Columbia v. Virginia Hotel Co.* (1953, 92 App. D. C. 186, 204 F. 2d 390).

REGULATIONS NOT RETROACTIVE

1953 amendment to regulations, prescribed by Commissioners of District of Columbia to govern computation of franchise taxes, did not operate retroactively, and corporation's franchise tax liability for years 1949, 1950 and 1951 should have been determined under regulations then in force. *District of Columbia v. Radio Corporation of America* (1956, 98 U. S. App. D. C. 119, 232 F. 2d 376).

TAXABLE INCOME

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

§ 47-1580a. Allocation and apportionment.

NOTES TO DECISIONS

APPORTIONMENT

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co. v. District of Columbia* (1958, 103 U. S. App. D. C. 102, 255 F. 2d 180).

APPORTIONMENT FORMULA

Under District of Columbia statute imposing for privilege of carrying on a trade or business within the District a franchise tax at five per cent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax,

the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Apportionment formula, contained in 1948 regulations prescribed by Commissioners of District of Columbia to govern computation of franchise tax, was valid. *District of Columbia v. Radio Corporation of America* (1956, 98 U. S. App. D. C. 119, 232 F. 2d 376).

ARBITRARY AND UNREASONABLE

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

COMMISSIONERS REGULATION VALID

Under the District of Columbia statutes imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758)

CONGRESSIONAL INTENT

The District of Columbia statute imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

Under District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners based their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

EXHAUSTING ADMINISTRATIVE REMEDY

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because

of improper apportionment formula. *The Smoot Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d 758).

FEDERAL REGULATIONS NOT BINDING

Under the District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the federal income tax law. *The Smooth Sand and Gravel Corp. v. District of Columbia* (1958, 104 U.S. App. D.C. 292, 261 F. 2d. 758).

REGULATIONS NOT RETROACTIVE

1953 amendment to regulations, prescribed by Commissioners of District of Columbia to govern computation of franchise taxes, did not operate retroactively, and corporation's franchise tax liability for years 1949, 1950, and 1951 should have been determined under regulations then in force. *District of Columbia v. Radio Corporation of America* (1956, 98 U. S. App. D. C. 119, 232 F. 2d 376).

TAXABLE INCOME

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

§ 47-1580b. Allocation of income and deductions between organizations, and so forth.

NOTES TO DECISIONS

TAXABLE INCOME

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the district, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pickup and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the district, in calculating income tax. *Industrial Coverall Laundry Corp. v. District of Columbia* (1951, 88 U. S. App. D. C. 266, 188 F. 2d 669).

§ 47-1583. Basis for determining gain or loss.

NOTES TO DECISIONS

CONSTRUCTION WITH OTHER LAWS

Statute defining taxable income for income tax purposes has no bearing upon statute relating to imposition of real property tax upon previously exempt additional grounds of religious institution which have been sold at profit, and fact that determination of gain or loss on sale of church properties was not in accord with income tax statute could not invalidate assessment. *Simpson Memorial Methodist Ch. v. District of Columbia* (1952, 91 U. S. App. D. C. 105, 199 F. 2d 169).

§ 47-1586f. (a) Time of payment.

(1) Except as provided in paragraph (2) of this subsection, one-half of the total amount of the tax due as shown on the taxpayer's return shall be paid to the Collector on the 15th day of April following the close of the calendar year and the remaining one-half of such tax shall be paid to the Collector on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of such tax shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of such tax shall be paid on the 15th day of the tenth month following the close of the fiscal year.

(2) **INDIVIDUAL INCOME TAXES.**—Any amount of individual income tax due, in excess of that withheld or remitted by way of a declaration of estimated tax, is due and payable in full at the time prescribed in this article for filing an income tax return.

(3) **DEFICIENCIES.**—Any deficiency in any tax imposed by this article, determined by the Assessor under the provisions of section 47-1586d shall be due and payable within ten days from the date of the assessment.

(4) **EMPLOYERS.**—Every employer required to deduct and withhold tax under this article shall, for the quarterly period beginning October 1, 1956, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make return to the Assessor and pay over to the Collector the tax required to be withheld under this article.

(5) **JEOPARDY WITHHOLDING ASSESSMENTS.**—If the Assessor, in any case, has reason to believe that the collection of the tax provided for in paragraph (4) of subsection (a) of this section is in jeopardy, he may require the employer to make such a return and pay such tax at any time.

(6) **PAYMENT OF ESTIMATED TAX.**—The estimated tax provided for in this article shall be paid as follows:

(A) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration; the second and third on July 15 and October 15 respectively, of the taxable year and the fourth on January 15 of the succeeding taxable year.

(B) If the declaration is filed after April 15 and not after July 15 of the taxable year and is not required by this article to be filed on or before April 15 of the taxable year, the estimated tax shall be paid

in three equal installments. The first installment shall be paid at the time of the filing of the declaration; the second on October 15 of the taxable year and the third on January 15 of the succeeding taxable year.

(C) If the declaration is filed after July 15 and not after October 15 of the taxable year and is not required by this article to be filed on or before July 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(D) If the declaration is filed after October 15 of the taxable year, and is not required by this article to be filed on or before October 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(E) If the declaration is filed after the time prescribed in this article, including cases where extensions of time have been granted, subparagraphs (B), (C) and (D) of paragraph (6) of subsection (a) of this section shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in this article, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(7) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October 15 of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(8) In the application of paragraphs (4), (5), (6) and (7) of subsection (a) of this section to taxpayers reporting income on a fiscal year basis, there shall be substituted for the dates specified therein, the months corresponding thereto.

(b) **EXTENSION OF TIME FOR PAYMENTS.**—At the request of the taxpayer the Assessor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: *Provided, however,* That where the time for filing a return is extended for a period exceeding six months under the provisions of section 47-1564b (b), the Assessor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) **VOLUNTARY ADVANCE PAYMENT.**—A tax imposed by this article, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. (July 16, 1947, 61 Stat. 353, ch. 258; Art. I, Title XII, § 7; as amended Mar. 31, 1956, 70 Stat. 71, ch. 154, § 10.)

AMENDMENTS

1956—Section 10 of the act of March 31, 1956, cited to text, amended subsection (a) to read as above set out.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1586g. Withholding of tax at source.

(a) Whenever the Assessor shall deem it necessary in order to satisfy the District's claim for a tax payable by any foreign corporation or unincorporated business, he may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the Collector an amount not in excess of 5 per centum of all income payable by such person to such foreign corporation or unincorporated business. After such foreign corporation or unincorporated business shall have filed all returns required under this title, and the same shall have been audited, the Collector shall refund any overpayment to the taxpayer.

(b) **WITHHOLDING OF TAX BY EMPLOYER.**—Every employer making payment of wages on or after October 1, 1956, to any employee as defined in this article, shall deduct and withhold a tax upon such wages, such tax to be determined by one of the following methods, to be elected by the employer, subject to the approval of the Assessor, with respect to any employee—

in accordance with a percentage method of withholding similar in principle to that under section 3402 of the Internal Revenue Code of 1954, [26 U. S. C. 3402] to be included in regulations;

in accordance with tables similar in principle to those contained in section 3402 of the Internal Revenue Code of 1954, to be included in regulations;

in accordance with a percentage of the amount of tax withheld under section 3402 of the Internal Revenue Code of 1954, or comparable provision in effect at the time with respect to the withholding of United States income tax, such percentage to be included in regulations; or

by such other method as may be prescribed in regulations.

(1) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of

employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In determining the amount to be deducted and withheld under this section the wages may, at the election of the employer, be computed to the nearest dollar.

(4) The Commissioners may, by regulations, authorize employers—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year;

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee were quarterly.

(5) The Commissioners are authorized to provide by regulation, under such conditions and to such extent as they deem proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be considered the tax required to be deducted and withheld under this section.

(c) **OVERLAPPING PAY PERIODS.**—If payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer;

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer;

(3) with respect to a period beginning in one and ending in another calendar year; or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this section shall be determined in accordance with regulations promulgated by the Commissioners under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(d) **INCLUDED AND EXCLUDED WAGES.**—If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than thirty-one consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any

such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(e) **WITHHOLDING EXEMPTIONS.**—(1) An employee receiving wages shall on any day be entitled to the withholding exemptions allowed under this article.

(2) Every employee shall, on or before October 1, 1956, or before the date of commencement of employment, whichever is later, furnish his employer with a signed withholding exemption certificate relating to the withholding exemptions which he claims, which in no event shall exceed the number to which he is entitled.

(3) Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished: *Provided*, That certificates furnished before October 1, 1956, shall be considered as furnished on that date.

(4) A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or before the first status determination date, January 1 or July 1 of each year, which occurs at least thirty days after the date on which such new certificate is furnished.

(5) If, on any day during the calendar year, the withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the exemptions to which the employee is entitled on such day, the employee shall in such cases and at such times as the Commissioners may prescribe, furnish the employer with a withholding exemption certificate relating to the exemptions which he claims with respect to such next taxable year, which shall in no event exceed the exemptions to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(6) If, on any day during the calendar year, the withholding exemptions to which the employee is entitled is less than the withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter, furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the exemptions to which he is entitled on such day. If, on any day during the calendar year, the withholding exemptions to which the employee is entitled is greater than the withholding exemptions claimed, the employee may furnish the employer with a new withholding exemp-

tion certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the exemptions to which he is entitled on such day.

(7) Withholding exemption certificates shall be in such form and contain such information as the Commissioners may by regulations prescribe.

(f) **FAILURE TO WITHHOLD OR PAY AMOUNTS WITHHELD.**—(1) Every employer, who fails to withhold or pay to the Collector any sums required by this section to be withheld and paid, shall be personally and individually liable therefor to the District of Columbia; and any sum or sums withheld in accordance with the provisions of this section shall be deemed to be, and shall be, held in trust by the employer for the District of Columbia.

(2) The District of Columbia shall have a lien upon all the property of any employer who fails to withhold or pay over to the Collector sums required to be withheld under this section. If the employer withholds but fails to pay over the amounts withheld to the Collector the lien shall accrue on the date the amounts were withheld. If the employer fails to withhold, the lien shall accrue on the date the amounts were required to be withheld.

(g) **STATEMENT TO BE FURNISHED EMPLOYEE.**—(1) Every person required to deduct and withhold from an employee a tax under this section, or who would have been required to deduct and withhold a tax under this section if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the wages paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the following:

(A) The name and address of such person;

(B) The name and address of the employee and his social security account number;

(C) The total amount of wages as defined in this article; and

(D) The total amount deducted and withheld as tax under this section.

The statement required to be furnished by this subsection in respect of any wages shall be furnished at such other times, shall contain such other information, and shall be in such form, as the Commissioners may by regulation prescribe. A duplicate of such statement if made and filed in accordance with regulations prescribed by the Commissioners shall constitute the return required to be made in respect to such wages.

(2) The Commissioners may promulgate regulations providing for reasonable extensions of time, not in excess of thirty days, to employers required to furnish statements under this subsection.

(h) **LIABILITY FOR TAX WITHHELD.**—An employer shall be liable for the payment of tax required to be deducted and withheld under this section. Such tax shall be paid to the Collector and shall not be paid to any other person.

(i) **DECLARATIONS, REQUIREMENTS, TIME FOR FILING.**—(1) Every person residing or domiciled in the District at the times prescribed in paragraph (4) of this subsection shall, at such times, make a declaration of his estimated tax for the taxable year if—

(A) the gross income for the taxable year can reasonably be expected to consist of wages and of not more than \$1,000 from sources other than such wages, and can reasonably be expected to exceed the total amount of the personal exemptions to which he is entitled under this article plus \$5,000; or

(B) the gross income can reasonably be expected to include more than \$1,000 which is not subject to the withholding provisions of this article, and can reasonably be expected to exceed the personal exemptions to which he is entitled under this article, plus \$500.

This requirement shall not apply to any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year. Under this article, a declaration of estimated tax shall be considered a return of income.

(2) In the declaration required under paragraph (1) of this subsection, the individual shall state—

(A) the amount which he estimates as the amount of income tax due under this article for the taxable year;

(B) the amount which he estimates as the credit for tax withheld for the taxable year under this article;

(C) the excess of the amount estimated under subparagraph (A) over the amount estimated under subparagraph (B), which excess for purposes of this section shall be considered the estimated tax for the taxable year; and

(D) such other information as may be prescribed in regulations promulgated by the Commissioners.

(3) In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them.

(4) The declaration required under paragraph (1) of this subsection shall be filed with the Assessor

on or before April 15 of the taxable year, except that if the requirements of paragraph (1) of this subsection are first met—

(A) after April 1 and before July 2 of the taxable year, the declaration shall be filed on or before July 15 of the taxable year;

(B) after July 1 and before October 2 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year; or

(C) after October 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year: *Provided*, That the declaration required to be filed during 1956 may be filed not later than October 15, 1956, if the requirements of paragraph (1) of this subsection are fulfilled at any time prior to October 1, 1956.

(5) An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioners.

(6) If on or before January 15 of the succeeding taxable year the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on the return as payable, then under regulations prescribed by the Commissioners—

(A) if the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this section, be considered as such declaration; and

(B) if the tax shown on the return, reduced by the credits under this article, is greater than the estimated tax shown in a declaration previously made or, in the last amendment thereof, such return shall, for the purposes of this section, be considered as the amendment of the declaration permitted by this subsection to be filed on or before such January 15.

(7) The Commissioners may promulgate regulations governing reasonable extensions of time for filing declarations and paying the estimated tax. Except in the case of taxpayers who are abroad, no such extensions shall be for more than six months.

(8) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(9) The provisions of section 47-1584c shall apply to a declaration of estimated tax.

(10) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year.

(j) **RELIEF FROM ONE-HALF OF INCOME TAX LIABILITY FOR THE FIRST TAXABLE YEAR UNDER WITHHOLDING.**—One-half of the liability for the income tax imposed by this Act for the calendar year 1956, or the fiscal year of a taxpayer beginning during such calendar year, upon any resident of the District (other than fiduciaries) shall be discharged. The remainder of the total amount of the income tax due as shown on the taxpayer's return shall be paid to the collector on the 15th of April, 1957, or if the return be made on the basis of a fiscal year the

remainder of the total amount of such tax shall be paid on the fifteenth day of the fourth month following the close of the fiscal year.

(k) **WITHHOLDING OF INCOME TAX AND PAYMENT OVER TO COLLECTOR BY THE UNITED STATES.**—(1) The Secretary of the Treasury of the United States, pursuant to regulations promulgated by the President, is authorized and directed to enter into an agreement with the Commissioners, within one hundred and twenty days of the request for agreement from the Commissioners. Such agreement shall provide that the head of each department or agency of the United States shall comply with the requirements of this article in the case of employees of such agency or department who are subject to income taxes imposed by this article, and whose regular place of employment is within the District of Columbia. No such agreement shall apply with respect to compensation for service as a member of the Armed Forces of the United States, or with respect to compensation of an employee who is not a resident of the District of Columbia as defined in this article.

(2) Nothing in this subsection shall be deemed to consent to the applicability of any provision of law which has the effect of imposing more burdensome requirements upon the United States than it imposes upon other employers, or which has the effect of subjecting the United States or any of its officers or employees to any penalty or liability by reason of the provisions of this subsection. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, Title XII, § 8; as amended Mar. 31, 1956, 70 Stat. 72-77, ch. 154, § 11.)

AMENDMENTS

1956—Section 11 of the act of March 31, 1956, cited to text, amended the section by designating it as subsection (a) and by adding the new matter set out under subsections (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k).

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1586j. Refunds.

(a) Except as to any deficiency taxes assessed under the provisions of section 47-1586d, where there has been an overpayment of any tax imposed by this article, the amount of such overpayment may be credited against any liability in respect of any income or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the person who made the overpayment, and the balance shall be refunded to such person.

No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Assessor may determine to have been an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. The amount of such credit or refund shall not exceed the portion of the tax paid during the three years

immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of such credit or refund. Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Assessor: *Provided*, That if it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court that any part of any tax which was assessed as a deficiency under the provisions of section 47-1586d was an overpayment, interest shall be allowed and paid upon such overpayment at the rate of one-third of 1 per centum per month or portion of a month from the date such overpayments were paid until the date of refund, and in addition thereto any interest upon such overpayment which was paid by the taxpayer shall be refunded.

(b) **REFUND TO EMPLOYER.**—(1) Where there has been an overpayment of tax under section 47-1586g, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld under section 47-1586g by the employer.

(2) Unless written application for refund or credit is received by the Assessor from the employer within three years from the date the overpayment was made, no refund or credit shall be allowed.

(c) **REFUND OF OVERPAYMENT OF TAX WITHHELD.**—(1) Where the amount of the tax withheld at the source under section 47-1586g exceeds the taxes imposed by this article against which the tax so withheld may be credited under this section, the amount of such excess shall be considered an overpayment: *Provided*, That, any other provision of law notwithstanding, interest on any overpayment of taxes collected under the withholding provisions of this article and under any declaration of estimated tax shall not begin to accrue until ninety days after the overpayment is made or after the date of filing of a final return, whichever is later.

(2) **PRESUMPTION AS TO DATE OF PAYMENT.**—For the purposes of this section, any tax actually deducted and withheld at the source during any calendar year under this article shall, in respect of the recipient of the income, be deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit under this article. For the purpose of this section, any amount paid prior to the fifteenth day of the fourth month following the close of the taxable year as estimated tax for such taxable year shall be deemed to have been paid on the fifteenth day of the fourth month following the close of such taxable year.

(3) Authority to refund overpayments of taxes collected pursuant to section 47-1586g is vested in the Commissioners or their duly authorized representatives. Such refunds shall be made from moneys paid pursuant to the provisions of section 47-1586g and retained in a special account in the Treasury of the United States. The total amount so retained shall not exceed \$500,000 at any one time. Any excess in such special account not required for refunding overpayments collected pursuant to sec-

tion 47-1586g at any time, as determined by the Assessor, shall be transferred to the general fund of the District. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, Title XII, § 11; May 27, 1949, 63 Stat. 133, ch. 146, Title IV, § 418; as amended Mar. 31, 1956, 70 Stat. 78, ch. 154, § 12.)

AMENDMENTS

1956—Section 12 of the act of March 31, 1956, cited to text, designated the present section as subsection (a); amended the first sentence of the section to read as above set out; the proviso clause was amended by striking out "4 per centum per annum" and inserting in lieu thereof "one-third of 1 per centum per month or portion of a month," and by adding the new matter set out under subsections (b) and (c).

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

TITLE XIII.—PENALTIES AND INTEREST

§ 47-1589. Failure to file return.

(a) **FAILURE TO FILE RETURN.**—In case of any failure to make and file a return required by this article, within the time prescribed by law or prescribed by the Commissioners or Assessor in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. With respect to declarations of estimated tax, for the purposes of this subsection, the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

(b) **FAILURE TO FILE EMPLOYER'S QUARTERLY RETURN.**—An employer required to withhold taxes on wages and make quarterly returns to the Assessor and to make payment of amounts withheld to the Collector who fails to withhold such taxes, or to make such returns, or who fails to remit amounts collected to the Collector, shall be subject to a civil penalty (in addition to criminal penalties provided for in this article) equal to 25 per centum of the amount of taxes that should have been properly withheld and paid over to the Collector for each such failure. Such penalty shall be assessed by the Assessor and collected by the Collector.

(c) **UNDERESTIMATE OF TAX BY RESIDENTS.**—If 80 per centum of the tax, determined without regard to the amount of credit for tax withheld, exceeds the estimated tax, increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This subsection shall not apply to the taxable year in which falls the death of the taxpayer, nor shall it apply to the taxable year in which the taxpayer makes a timely

payment on April 15, July 15, and October 15, of such year, and January 15 of the succeeding year, and the total of all such payments is an amount at least as great as though computed on the basis of the facts shown on his return for the preceding taxable year.

(d) **COLLECTION OF PENALTIES ADDED TO TAX.**—The amount added to any tax under this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be assessed and collected. (As amended Mar. 31, 1956, 70 Stat. 79, ch. 154, § 13.)

AMENDMENTS

1956—Section 13 of the act of March 31, 1956, cited to text, was amended to read as above set out.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1589a. (a) Interest on deficiencies.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month or portion of a month from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) **If extension granted for payment of deficiency.**—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, Title XIII, § 2; as amended Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENTS

1956—Section 14 of the act of March 31, 1956, cited to text, amended sections 47-1589a, 47-1589c and 47-1589d, by striking out "6 per centum per annum" at each place where it appeared and inserted in lieu thereof "one-half of 1 per centum per month or portion of a month."

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1589c. Additions to the tax in case of nonpayment—(a) Tax shown on return.

(1) **General rule.**—Where the amount determined by the taxpayer as the tax imposed by this article, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date prescribed for its payment until it is paid.

(2) **If extension granted.**—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47-1589d is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (a) (1) of this section, interest at the rate of one-half of 1 per centum per month or portion of a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) **DEFICIENCY.**—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47-1589a or under section 47-1589b, or any addition to the tax in case of delinquency provided for in section 47-1589 is not paid in full within ten days from the date of assessment thereof, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date of such notice and demand until it is paid. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIII, § 4; as amended Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENTS

1956—Section 14 of the act of March 31, 1956, cited to text, amended sections, 47-1589a, 47-1589c, and 47-1589d, by striking out "6 per centum per annum" at each place where it appeared and inserted in lieu thereof "one-half of 1 per centum per month or portion of a month."

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1589d. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 47-1586f (b), there shall be collected, as a part of such amount, interest thereon at the rate of one-half of 1 per centum per month or portion of a month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIII, § 5; as amended Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENTS

1956—Section 14 of the act of March 31, 1956, cited to

text, amended sections 47-1589a, 47-1589c, and 47-1589d, by striking out "6 per centum per annum" at each place where it appeared and inserted in lieu thereof, "one-half of 1 per centum per month or portion of a month."

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

TITLE XIV.—LICENSES

§ 47-1591. Requirement.

(a) No corporation or unincorporated business, except such corporations or unincorporated businesses as are expressly exempt under the provisions of section 47-1554, shall engage in or carry on any trade or business in the District without a license so to do issued under this article in addition to all other licenses and permits required by law, except as hereinafter provided. For the first calendar year to which this article is applicable, no license shall be required of any corporation licensed under the provisions of sections 47-1501 to 47-1547. Every corporation not so licensed and every unincorporated business shall obtain such license within sixty days after the approval of sections 47-1551 to 47-1595. Every corporation or unincorporated business which commences to engage in or carry on any trade or business in the District after the passage of sections 47-1551 to 47-1595 shall obtain a license under this article within sixty days after the date of the commencement of such trade or business in the District. Applications for licenses shall be filed with the Assessor prior to January 1 of each year upon forms prescribed and furnished by the Assessor, and each application shall be accompanied by a fee of \$10: *Provided, however,* That any unincorporated business having a gross income for the taxable year of \$5,000 or less shall not be required to obtain the license provided for in this title.

(b) **TRADE, BUSINESS, OR PROFESSIONAL LICENSE.**—Every person, other than a corporation, who, as an individual, sole proprietor, partner, associate, or joint venturer shall, in the District of Columbia, engage in or conduct a trade, business, or profession, which is excluded from the imposition of the District of Columbia tax on unincorporated businesses under the definition set forth in section 47-1574, shall file with the Assessor prior to December 1st of the calendar year 1957, and prior to December 1st of each calendar year thereafter, an application for a trade, business, or professional license, accompanied by a license fee of \$25, which license, upon issuance, shall entitle such person to engage in or conduct a trade, business, or profession in the District of Columbia during the next ensuing calendar year: *Provided,* That no license shall be required under this subsection to be obtained by any individual or sole proprietor engaging in or conducting a trade, business, or profession in the District of Columbia whose annual gross receipts from such trade, business, or profession in the District of Columbia were, during the prior calendar year, less than \$5,000, and no

partner, associate, or joint venturer shall be required to obtain a license where the annual gross receipts of the partnership, association, or joint venture in the District of Columbia were, during the prior calendar year, less than \$5,000: *And provided further,* That every person who, during any calendar year, commences as an individual, sole proprietor, partner, associate, or joint venturer, to engage in or conduct a trade, business, or profession in the District of Columbia without having so engaged in the prior calendar year, shall, within fifteen days after the date in said commencement year on which such trade, business, or profession attains gross receipts of \$5,000, make application to the Assessor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession was commenced, and any person who, during the prior calendar year, although engaged in a trade, business, or profession, did not attain gross receipts of \$5,000, shall, within fifteen days after the date within the calendar year on which such trade, business, or profession attains gross receipts of \$5,000, make application to the Assessor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession, attained gross receipts of \$5,000.

No license shall be required (1) of any registered nurse or practical nurse for the purpose of engaging in or conducting a trade, business, or profession of registered nurse or practical nurse in the District of Columbia, (2) of any person licensed under chapter II, section 26, of the "Life Insurance Act", approved June 19, 1934 (48 Stat. 1125, ch. 672; sec. 35-425, D. C. Code, 1951), for the purpose of acting within the District of Columbia for any life insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance, or (3) of any person engaged in the ministry of healing by prayer or spiritual means alone and who is a member of a church or denomination whose tenets and teachings include the practice of such healing. No officer or employee of the Government of the United States, or the government of the District of Columbia, and no individual in private or public employment who is compensated for services performed by him as an employee for his employer shall, for such employment, be required to obtain a license and, in the case of a partnership, association, or joint venture, no license shall be required of any partner, associate, or joint venturer who does not himself engage in or conduct the trade, business, or professional activities of the partnership, association, or joint venture in the District of Columbia. The license required to be obtained under the provisions of this subsection shall be in addition to all other licenses, fees, and permits required by law. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, Title XIV, § 1; May 27, 1949, 63 Stat. 133, ch. 146, Title IV, § 419; as amended Mar. 31, 1956, 70 Stat. 79, ch. 154, § 15; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 7.)

AMENDMENTS

1957—Act of September 4, 1957, cited to text, amended subsection (b) to read as above set out. Section 8 of the

same act made this amendment applicable to the calendar year 1958 and subsequent calendar years.

1956—Section 15 of the act of March 31, 1956, cited to text, designated the present section as (a) and added the new matter set out under (b).

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1591a. Duration of license.

All licenses issued under this title shall be in effect for the duration of the calendar year for which issued, unless revoked as provided in this title, and shall expire at midnight on the 31st day of December of each year. No licenses issued under this title may be transferred to any other person. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 2; as amended Mar. 31, 1956, 70 Stat. 80, ch. 154, § 16.)

AMENDMENTS

1956—Section 16 of the act of March 31, 1956, cited to text, amended the section by striking out the last sentence thereof and inserting a new sentence as above set out.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1591b. Licenses to be posted.

All licenses granted under this title to persons having an office or place of business in the District must be conspicuously posted in the office or on the premises of the licensee, and said license shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspection. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 3; as amended Mar. 31, 1956, 70 Stat. 80, ch. 154, § 17.)

AMENDMENTS

1956—Section 17 of the act of March 31, 1956, cited to text, struck out "corporations or unincorporated businesses" and inserting in lieu thereof "persons".

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

§ 47-1591f. Penalty for failure to obtain license.

Any person engaged in or carrying on any trade or business in the District or receiving income from sources within the District within the meaning of sections 47-1580 to 47-1580b without having obtained a license so to do, within the time prescribed by section 47-1591, and any person engaging in or carrying on any trade or business in the District or receiving income from sources within the District within

the meaning of sections 47-1580 to 47-1580b for or on behalf of any corporation or unincorporated business not having a license so to do, shall, upon conviction thereof, be fined not more than \$300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation or unincorporated business not having the license required under this title. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, Title XIV, § 7; as amended Mar. 31, 1956, 70 Stat. 80, ch. 154, § 18.)

AMENDMENTS

1956—Section 18 of the act of March 31, 1956, cited to text, amended the section by striking out "Any corporation or unincorporated businesses" and inserting in lieu thereof "Any person".

CROSS REFERENCE

1956—For provisions regarding separability clause of the Act of March 31, 1956, see note under section 47-1551.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

EFFECTIVE DATE OF AMENDMENT

1956—See note under section 47-1551c.

TITLE XV.—APPEAL

§ 47-1593. Appeal to Board of Tax Appeals for the District of Columbia.

NOTES TO DECISIONS

PAYMENT

Where corporation delivered to examiner in office of District of Columbia Assessor of Taxes, checks in respect to business privilege tax assessed against corporation, and a letter protesting the tax, and Assessor's office handed on the checks to office of Collector of Taxes, there was sufficient payment of tax to Collector to permit an appeal by corporation to District of Columbia Board of Tax Appeals. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 U. S. App. D. C. 15, 204 F. 2d 29).

TITLE XVI.—RULES AND REGULATIONS

§ 47-1595. Commissioners to prescribe and publish rules.

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

§ 47-1595a. Commissioners authorized to make rules and regulations in regard to act of March 31, 1956.

Sec.

47-1595a. The Commissioners of the District of Columbia are authorized to make rules and regulations to carry out the provisions of this Act. (March 31, 1956, 70 Stat. 71, ch. 154, title VI, § 601.)

INTERNAL REFERENCE

The act of March 31, 1956, referred to in text, is classified to the following sections in this code: 47-1551c, 47-1557b, 47-1564a, 47-1567a, 47-1567b, 47-1567d, 47-1586f, 47-1586g, 47-1586j, 47-1589, 47-1589a, 47-1589c, 47-1589d, 47-1591, 47-1591a, 47-1591b, 47-1591f, 47-1595a, 47-2601, 47-2605, 47-2701, 25-124, 25-124 note, 25-138, 47-2501b.

Chapter 16.—INHERITANCE AND ESTATE TAXES

ARTICLE I.—INHERITANCE TAX

§ 47-1601 [20: 969]. Imposition of tax.

* * * * *

(e) Property transferred exclusively for public or municipal purposes, to the United States or the District of Columbia, or exclusively for charitable, educational, or religious purposes, shall be exempt from any and all taxation under the provisions of this section (as amended, Aug. 1, 1955, 69 Stat. 683, ch. 440, § 1.)

AMENDMENTS

1955—The act of August 1, 1955, cited to text, amended subsection (e), by deleting therefrom the words, "within the District of Columbia, and property transferred to the American National Red Cross."

NOTES TO DECISIONS

CHARITABLE TRUSTS

Where will left property in trust for distribution of income and finally the principal to such worthy charity or charities in the District of Columbia as trustees in their own discretion might select, such property was transferred exclusively for charitable, educational, or religious purposes within the District of Columbia and was therefore exempt from District of Columbia inheritance tax. *District of Columbia v. Joseph F. Castiello, etc.* (1956, 97 U. S. App. D. C. 289, 230 F. 2d 839).

CONCLUSIVENESS OF FINDINGS

In proceeding for review of decision of District of Columbia Board of Tax Appeals that decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code, and that decedent had not retained domicile in state from which he had come to District of Columbia to work for the Government, findings of Board were required to be accepted when not clearly wrong. *Weitknecht v. District of Columbia* (1952, 90 U. S. App. D. C. 291, 195 F. 2d 570).

CONSTRUCTION

In proceeding by bank against District of Columbia for review of decision of Board of Tax Appeals, decision of board that bank, which was paying interest to its depositors, was required to pay gross earnings tax for years 1946 and 1947 although bank sold its assets, ceased business and went into voluntary liquidation on November 30, 1946, was affirmed by the Court of Appeals in banc by an equally divided court. *Columbia National Bank of Washington v. District of Columbia* (1952, 89 U. S. App. D. C. 224, 195 F. 2d 942).

CONTEMPLATION OF DEATH

Advanced age alone does not establish contemplation of death for inheritance tax purposes. *District of Columbia v. Fenton M. Fadeley et al.* (1956, 98 U. S. App. D. C. 176, 233 F. 2d 667).

Where agreement between decedent and other partners for transfer of decedent's partnership interest was such that decedent alone was to have fixed percentage of partnership profits, and others assumed certain calculated risks, agreement was not without valuable consideration for inheritance tax purposes. *Id.*

Evidence justified finding that action of a settlor, three months before death of settlor, in renouncing a retained right to income from trust property, was in contemplation of death so that trust property was properly included in settlor's gross estate for inheritance taxation. *Heller v. District of Columbia* (1952, 91 U. S. App. D. C. 238, 198 F. 2d 983).

CONVEYANCE OF CONTEMPLATION OF DEATH

Evidence justified finding of Board of Tax Appeals for District of Columbia that a conveyance of realty made by decedent less than two years before death of decedent, and a transfer of promissory note receivable which decedent made less than two years before her death, were made in contemplation of death so as to subject them to

inheritance tax. *Heller v. District of Columbia* (1952, 91 U. S. App. D. C. 238, 198 F. 2d 983).

EVIDENCE

Evidence sustained finding that a decedent who had come to District of Columbia for position in Government, and who remained in district until his death several years after he lost his Government position, did not have a fixed and definite intent to return to his original home after he lost his Government position, and that consequently decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code. *Weitknecht v. District of Columbia* (1952, 90 U. S. App. D. C. 291, 195 F. 2d 570).

FIXING MARKET VALUE OF REMAINDER INTEREST

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *George Bowie McCeney et al. v. District of Columbia* (1956, 97 U. S. App. D. C. 282, 230 F. 2d 832.)

District of Columbia statutes providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

District of Columbia statutes providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged over-assessment and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

LIFE INTEREST

In District of Columbia inheritance tax proceeding, evidence sustained finding of the Tax Court that taxpayer who advanced money to brother for purchase of bonds, had intended to make gift of only life interest in such bonds, reserving remainder to herself, and that when bonds had passed to taxpayer upon death of brother there had been no transfer of any "interest" in bonds within inheritance tax statute. *District of Columbia v. Wilson* (1954, 94 U. S. App. D. C. 399, 216 F. 2d 630).

A life interest or contingent remainder held by decedent, if created by another, is considered to terminate at death and is not transferable interest within District of Columbia inheritance tax statute. *Id.*

MOTION TO DISMISS PETITION

Motion to dismiss petition for review of decision of District of Columbia Tax Court upon ground that petitioner was not party aggrieved within statute authorizing appeals from tax assessments by District of Columbia was of jurisdictional character and could be considered and decided notwithstanding fact that point was not raised in Tax Court. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

NATURE OF TAX

Tax upon inheritance is not a property tax, but is a duty or excise laid upon a privilege of taking property by descent. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

NONRESIDENT EDUCATIONAL INSTITUTION

A transfer by will to a nonresident educational institution of sum of \$100,000, to use net income for payment of tuition and related fees for study at a university located in Washington, D. C., for doctoral degrees by as large a number of predoctoral fellows of nonresident educational institution as such income would permit was exempt from taxation under the inheritance and estate tax provisions as property transferred exclusively for educational purposes within District of Columbia. *District of Columbia v. University of Notre Dame etc.* (1957, 101 U. S. App. D. C. 10, 246 F. 2d 697).

PERSON AGGRIEVED

Generally an executor is not "person aggrieved" for purposes of an appeal to Tax Court unless either estate as whole is directly affected by decision appealed from, or unless his individual interests are directly and personally affected thereby. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759. See also same case at 226 F. 2d 763, where motion to substitute real party in interest was granted.)

RECORD ON APPEAL

Record on appeal from assessment of District of Columbia inheritance tax sustained Tax Court's finding that gifts to two grandsons were based on life motives and were not made in contemplation of death. *District of Columbia v. Fenton M. Fadeley et al.* (1956, 98 U. S. App. D. C. 176, 233 F. 2d 667).

TAXABLE TRANSFER

In determining whether there has been taxable transfer within District of Columbia inheritance tax statute, concern is with real ownership of property rather than with refinements of title. *District of Columbia v. Wilson* (1954, 94 U. S. App. D. C. 399, 216 F. 2d 630).

TESTAMENTARY TRANSFERS

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under District of Columbia Code section taxing all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder v. District of Columbia* (1951, 88 U. S. App. D. C. 170, 187 F. 2d 217).

§ 47-1602. Based on market value—Appraisal.

NOTES TO DECISIONS

BURDEN OF ESTABLISHING MARKET VALUE

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute v. District of Columbia* (1957, 102 U. S. App. D. C. 83, 250 F. 2d 408).

FIXING MARKET VALUE OF REMAINDER INTEREST

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of

market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *George Bowie McCeney et al. v. District of Columbia* (1956, 97 U. S. App. D. C. 282, 230 F. 2d 832).

District of Columbia statutes providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

District of Columbia statutes providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

§ 47-1604. Report by decedent's personal representative—Contents—Payment.

NOTES TO DECISIONS

BURDEN OF ESTABLISHING MARKET VALUE

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court, that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute v. District of Columbia* (1957, 102 U. S. App. D. C. 83, 250 F. 2d 408).

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged over-assessment, and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

MOTION TO DISMISS PETITION

Motion to dismiss petition for review of decision of District of Columbia Tax Court upon ground that petitioner was not party aggrieved within statute authorizing appeals from tax assessments by District of Columbia was of jurisdictional character and could be considered and decided notwithstanding fact that point was not raised in tax court. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

PERSONS AGGRIEVED

Generally an executor is not "person aggrieved" for purposes of an appeal to Tax Court unless either estate as whole is directly affected by decision appealed from, or unless his individual interests are directly and personally affected thereby. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759; see also same case at 226 F. 2d 763, where motion to substitute real party in interest was granted).

§ 47-1605. Collection of distributive share.

NOTES TO DECISIONS

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive

share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged over-assessment, and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

§ 47-1607. Life and future estates—Payment of tax—Lien.

NOTES TO DECISIONS

FIXING MARKET VALUE OF REMAINDER INTEREST

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *George Bowie McCeney et al. v. District of Columbia* (1956, 97 U. S. App. D. C. 282, 230 F. 2d 832).

District of Columbia statutes providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

District of Columbia statutes providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

§ 47-1608 [20:969g]. Imposition of tax—Additional levy on transfers.

NOTES TO DECISIONS

CLAIM FOR REFUND OF TAX

Where estate's claim for refund of District of Columbia estate tax had been denied by assessor, District of Columbia Tax Court should not have dismissed appeal from assessor's ruling, although claim could not be determined until a simultaneous claim for refund of federal estate tax had been decided, but claim should have been placed on Tax Court's reserve calendar, until federal claim had been decided. *Estate of Gustave W. Forsberg v. District of Columbia* (1955, 95 U. S. App. D. C. 90, 220 F. 2d 197).

ARTICLE III—GENERAL

§ 47-1616. Liability of bond for assessments—Limitation.

NOTES TO DECISIONS

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged overassessment, and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

§ 47-1618. Administration—Rules—Appeal—Hearing—Decision—Testimony—Production of books and records.

NOTES TO DECISIONS

FIXING MARKET VALUE OF REMAINDER INTEREST

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *George Bowie McCeney et al. v. District of Columbia* (1956, 97 U. S. App. D. C. 282, 230 F. 2d 832).

District of Columbia statutes providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

District of Columbia statutes providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

MEASURE OF TAX ON ENCUMBERED PROPERTY

While a tax on inheritance or succession is not a property tax but a duty or excise laid on the privilege of taking property by descent, it is measured by the market value of the transferred property at the time the owner died. *Hyman v. District of Columbia* (1957, 101 U. S. App. D. C. 179, 247 F. 2d 585).

Where an unqualified devise transfers legal title, if it is encumbered at the date of death, the then market value of the property transferred is the gross value, less the encumbrance for inheritance tax purposes. *Id.*

The District of Columbia inheritance tax statute manifests a congressional intention to require that such tax be computed on the value of the realty or what the beneficiary actually received, and not the gross value of the realty transferred. *Id.*

Where decedent owed her brother a large sum of money and her will provided that if he had a claim on her realty interest, devise thereof should be "subject to such claim or lien" District of Columbia Inheritance Tax should have been computed not on the gross value of the realty received by the brother, but on the value thereof after the brother's claim thereon had been deducted. *Id.*

§ 47-1619 [20:969r]. Arrears.

If the taxes imposed by this chapter are not paid when due, one-half of 1 per centum interest for each month or portion of a month from the date when the same were due until paid shall be added to the amount of said taxes and collected as a part of the same, and said taxes shall be collected by the collector of taxes in the manner provided by the law for the collection of taxes due the District on personal property in force at the time of such collection. (As amended July 10, 1952, 66 Stat. 543, ch 649, § 2 (a).)

AMENDMENTS

1952—The 1952 act reduced the interest on various delinquent taxes from 12 percent to 6 percent per annum or from 1 percent to one-half of 1 percent per month. The act omitted a prior provision of the section which

provided that there would be exceptions in which the tax would be 6 percent per annum.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 8 of the act of July 10, 1952, cited to text, provided "The amendments made by section 2 of this act shall be effective July 1, 1952."

Chapter 17.—FINANCIAL INSTITUTION GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

§ 47-1701 [20:760]. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 percent on such gross earnings and each gas company, electric lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 4 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District. Each gas, electric lighting, and telephone company shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by the District of Columbia Income and Franchise Tax Act of 1947, [Ch. 15, T47, D. C. Code], and the tax imposed upon stock in trade of dealers in general merchandise under Section 47-1207. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; April 28, 1904, 33 Stat. 564, ch. 1815, § 2; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2; May 18, 1954, 68 Stat. 118 ch. 218, title XIV, § 1401 as amended July 24, 1956, eff. Aug. 15, 1956, 70 Stat. 599, ch. 669, § 8 (a).)

AMENDMENTS

1956—Section 8 (a) of the act of July 24, 1956, cited to text, struck out of the third and fourth sentences of the section and inserted in lieu thereof the matter above set out starting with the words "Each gas."

1954—The act of May 18, 1954, deleted the last two sentences of the section and substituted new language which has the effect of increasing the mileage tax imposed upon bus transportation companies, and eliminates the exemption from franchise taxes. The amendment provides for a 2 percent tax on gross receipts on street railroad and bus operations.

The amendments to this section became effective on July 1, 1954, in accordance with the provisions of section 1403 of the act.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

EFFECTIVE DATE

1956—Section 8 (a) of the act of July 24, 1956, cited to text, became effective on August 15, 1956.

NOTES TO DECISIONS

ATTACHMENT DATE OF LIABILITY

Liability for gross receipts tax, on operators of street railroads and buses in District of Columbia, attached as gross earnings were received, and even though statute leveling tax was repealed prior to date for payment thereof, liability for payment was not thereby affected. *D. C. Transit System, Inc. v. Pearson et al.* (1957, 149 F. Supp. 18).

SUCCESSOR'S LIABILITY

Successor, which assumed all of liabilities of predecessor operator of streetcar and bus lines in District of Columbia, was liable for gross receipts tax on predecessor's earnings. *D. C. Transit System, Inc. v. Pearson et al.* (1957, 149 F. Supp. 18).

§ 47-1703 [20:762]. Savings banks.

NOTES TO DECISIONS

GROSS EARNINGS TAX

In proceeding by bank against District of Columbia for review of decision of Board of Tax Appeals, decision of board that bank, which was paying interest to its depositors, was required to pay gross earnings tax for years 1946 and 1947 although bank sold its assets, ceased business and went into voluntary liquidation on November 30, 1946, was affirmed by the Court of Appeals in banc by an equally divided court. *Columbia National Bank v. District of Columbia* (1952, 89 U. S. App. D. C. 224, 195 F. 2d 942).

PAYMENT UNDER PROTEST

Where litigation, determining that trust companies were subject merely to tax of 4 percent of their gross earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 percent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 percent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Columbia v. American Security & Trust Co., District of Columbia v. Washington Loan & Trust Co.* (1953, 92 U. S. App. D. C. 33, 202 F. 2d 21).

Chapter 18—INSURANCE COMPANIES

§ 47-1808 [20:966g]. Exemption of nonprofit relief associations.

NOTES TO DECISIONS

NAVY MUTUAL AID ASSOCIATION

The Navy Mutual Aid Association formed to aid families of deceased members, by providing a substantial sum for their relief at as near actual net cost of insurance as possible, and by securing for them without cost, pensions to which they may be entitled, was subject to the provisions of the Life Insurance Act but not subject to the tax on insurance companies. *Fechtelers et al. v. Jordan, Jordan v. The Navy Mutual Aid Association* (1955, 95 U. S. App. D. C. 54, 218 F. 2d 865).

Chapter 19.—MOTOR FUEL TAX

§ 47-1901 [20:831]. Rate—Use restricted.

A tax of 6 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

* * * *

(April 23, 1924, 43 Stat. 106, ch. 131, § 1; August 17, 1937, 50 Stat. 676, ch. 690, title III, § 1; June 4, 1952, 66 Stat. 100, ch. 366, § I; May 18, 1954, 68 Stat. 117, ch. 218, title XI, § 1101.)

AMENDMENTS

1954—The act of May 18, 1954, increased the motor-vehicle fuel tax from 5 to 6 cents a gallon. The amendment became effective on June 1, 1954, in accordance with the terms of section 1103 of the act.

1952—The act of June 4, 1952, increased the tax per gallon on all motor-vehicle fuels within the District from 2 to 5 cents per gallon.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 4 of the act of June 4, 1952, provided: "This Act shall become effective on the first day of the first month following its enactment, but not prior to July 1, 1952."

§ 47-1901b. Repealed. June 4, 1952, 66 Stat. 100, ch. 366, § 3, eff. July 1, 1952.

Section, act July 16, 1947, 61 Stat. 359, Art. III, provided for temporary increase in rate to 4 cents per gallon from August 1, 1947 to June 30, 1952.

§ 47-1912 [20: 844]. Tax on fuel sold by United States agency in the District of Columbia.

When under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 6 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections. (April 23, 1924, 43 Stat. 109, ch. 131, § 14; June 4, 1952, 66 Stat. 100, ch. 366, § 2; May 18, 1954, 68 Stat. 117, ch. 218, title XI, § 1102.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section so as to increase the tax on motor-vehicle fuel from 5 to 6 cents a gallon effective June 1, 1954.

1952—The act of June 4, 1952, increased the tax on gasoline or other motor-vehicle fuel from 2 to 5 cents per gallon.

EFFECTIVE DATE OF 1952 AMENDMENT

See note following section 47-1901.

Chapter 20.—DOG TAX

§ 47-2001 [20: 915]. Dog tax.

TRANSFER OF FUNCTIONS

Reorganization Order No. 20 dated November 10, 1952 transferred the sale of dog licenses (Dog Tax) from the Collector of Taxes to the Superintendent of Licenses. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and the plan are set out in the appendix to Title 1.

§ 47-2002 [20: 916]. Collector to furnish metallic tag.

TRANSFER OF FUNCTIONS

Reorganization Order No. 20 dated November 10, 1952, transferred the sale of dog licenses (Dog Tax) from the Collector of Taxes to the Superintendent of Licenses. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 47-2003 [20: 917]. Impounding of dogs found at large without tag.

TRANSFER OF FUNCTIONS

Reorganization Order No. 52 of the Board of Commissioners dated June 30, 1953, transferred to the Metropolitan Police Department under the direction and control of the Chief of Police, all functions under the previously existing District of Columbia Pound, including the duties, powers, and authorities of all officers and employees assigned thereto. The order established the position

of Poundmaster to be responsible for the performance of those functions under the direction and control of the Chief of Police. The order abolished the previously existing District of Columbia Pound. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the appendix to Title 1.

§ 47-2008 [20: 921a]. Poundmaster given power to make arrest.

TRANSFER OF FUNCTIONS

See note under section 47-2003 concerning the District of Columbia Pound.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

§ 47-2101 [20: 1742]. Employment agencies — License required—Definitions.

CROSS REFERENCE

See section 11-772 concerning the review of Commissioners' orders denying, revoking or suspending a license for a private employment agency in the Municipal Court of Appeals for the District of Columbia.

COMPILER'S NOTE

The provisions in section 47-2101 relating to the review of decisions in the United States Court of Appeals for the District of Columbia have been superseded by the provisions of section 11-772 concerning the exclusive jurisdiction of the Municipal Court of Appeals for the District of Columbia in such cases.

Chapter 23.—GENERAL LICENSE LAW

Sec.
47-2310a. Conventions of national associations of hairdressers or cosmetologists, exempted.

§ 47-2301 [20: 1701]. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

TRANSFER OF FUNCTIONS

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the appendix to Title 1.

CROSS REFERENCE

Commissioners' authority to determine and pay honorariums to various board members and commissioners—Deposit of fees collected in the Treasury—Acceptance of honorariums without prejudice to other compensation—Refund of unearned fees and other applicable provisions. See sections 1-254 to 1-259.

NOTES TO DECISIONS

POWER TO LICENSE TAXICABS

Under statutes delegating to District of Columbia Public Utilities Commission power to regulate public utilities, Congress did not confer the power to grant or withhold licenses to operate taxicabs, but such power was delegated to Commissioners of the District of Columbia. *Associated Taxicab Operators v. Hayes et al.* (1957, 99 U. S. App. D. C. 400, 240 F. 2d 638).

§ 47-2309 [20: 1709]. Auctioneers—Penalty for failure to account.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2310a. Conventions of national associations of hairdressers or cosmetologists, exempted.

The provisions of sections 2-1301 to 2-1328 inclusive, and of section 47-2310, as amended, shall not be applicable to activities conducted in connection with any bona fide regularly scheduled national annual convention of any national association of professional hairdressers or cosmetologists, from which the general public is excluded. (Aug. 4, 1955, 69 Stat. 485, ch. 544, § 1.)

CROSS REFERENCE

Exemption from provisions, section 2-1301 note.

§ 47-2311 [20: 1711]. Massage establishments—Turkish, Russian, or medicated baths.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2321 [20: 1721]. Bowling alleys—Billiard and pool tables—Games.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2322 [20: 1722]. Shooting galleries.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2328 [20: 1728]. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

NOTES TO DECISIONS

ESTOPPEL

Where plaintiff's application for building permit showed that he wished to operate a hotel but two weeks before plaintiff got his permit Commissioners of District of Columbia had given public notice of a hearing with regard to proposed new licensing regulations, and a month after he got permit and several months before he completed his alterations, new licensing regulations were adopted providing that a building must have at least 30 bedrooms to be licensed as a hotel, and it did not appear that plaintiff was prevented from continuing to use his 18 bedroom property as before, there was no basis for estoppel against refusal to grant license to operate a hotel. *Courembis v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 372, 193 F. 2d 18).

FEE SCHEDULE

Where statute, which expressly repealed former licensing statutes, authorized District of Columbia Commissioners to classify, according to use, method of operation and size, buildings containing living or lodging quarters, to require license for business of operating such buildings, and to fix schedule of license fee in such amount as would be commensurate with cost of inspection, supervision, or regulations, and commissioners issued order imposing on owners or managers of hotels, apartment houses, and lodging houses, same license fees as were imposed under repealed statute, schedule of fees was invalid. *District of Columbia v. Greenway, Inc.* (D. C. Mun. App. 1954, 103 A. 2d 872)

"HOTELS"

Requirement in District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was within licensing authority of Commissioners of the District of Columbia. *Courembis v. District of Columbia et al.* (1951, 89 U. S. App. D. C. 372, 193 F. 2d 18).

Requirement of District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was not arbitrary. *Courembis v. District of Columbia* (1951, 89 U. S. App. D. C. 372, 193 F. 2d 18).

§ 47-2331. Routed passenger vehicles, vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Utilities Commission of the District of Columbia, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year: *Provided*, That the provisions of this subparagraph shall not apply to companies operating both street railroad and bus services in the District of Columbia which pay taxes to the District of Columbia on their gross receipts: *Provided further*, That nothing contained in the preceding proviso shall be construed to require such companies to comply with the provisions of section 44-301. The Public Utilities Commission shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other personal or license tax, in connection with such operation, the sum of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be com-

menced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of paragraph (b) of this section without the approval of the Public Utilities Commission of the District of Columbia.

(c) Owners of passenger vehicles for hire having a seating capacity of eight passengers or more, in addition to the driver or operator, other than those licensed to the preceding paragraph, shall pay a license tax of \$100 per annum for each vehicle used. No such vehicle shall be operated unless there shall be conspicuously displayed therein a license issued under the terms of this paragraph. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 1 of such year: *Provided, however*, That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(d) Owners of passenger vehicles for hire, whether operated from a private establishment or from public space, other than those licensed under the two preceding paragraphs and under paragraph (i) of this section, shall pay a license tax of \$25 per annum for each such vehicle used in the conduct of their business. Stands for such vehicles upon public space, adjacent to hotels or otherwise, may be established in the manner provided in section 40-603. The Public Utilities Commission is hereby authorized to make and enforce all such reasonable and usual police regulations as it may deem necessary for the proper conduct, control, and regulation of all vehicles described in this and the preceding paragraphs and section 47-2333. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 1 of such year: *Provided, however*, That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(e) No person shall engage in driving or operating any vehicle licensed under the terms of paragraphs (c) and (d) of this section without having procured from the commissioners of the District of Columbia or their designated agent a license which shall not be issued except upon evidence satisfactory to the director of motor vehicles under the direction of the commissioners of the District of Columbia that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of \$5. Such license shall be displayed within the vehicle at all times while the licensee is engaged in driving any vehicle licensed under the terms of paragraphs (c) and (d). Application for such license shall be made in such form as shall be prescribed to the commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each

person so licensed, his annual license number, and all matters affecting his qualifications to be licensed hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred.

* * * * *

(i) Owners of ambulances for hire and owners of passenger vehicles which, when used for hire, are used exclusively for funeral purposes shall pay a license tax of \$25 per annum for each such vehicle used in the conduct of their business. Licenses issued under this subparagraph shall date from April 1 in each year but may be issued on or after March 1 of each year: *Provided, however*, That licenses issued under this subparagraph for the license period expiring on June 30 of any year shall remain valid until such expiration date, and the holders of such licenses, if otherwise qualified, shall be entitled to have issued to them upon expiration of such licenses new licenses for the license year beginning April 1 to be prorated for the remainder of the license year.

* * * * *

(July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 31; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3; Jan. 15, 1942, 56 Stat. 3, ch. 2; June 20, 1942, 56 Stat. 375, ch. 428; July 30, 1951, 65 Stat. 126, ch. 247, § 1, 2; May 18, 1954, 68 Stat. 119, ch. 218, title XIV, § 1402; July 19, 1954, 68 Stat. 493, ch. 544, § 1.)

AMENDMENTS

1954—The act of May 18, 1954, amended paragraph (b) by adding a proviso to the first sentence so as to exempt companies operating both street railways and bus services which pay gross receipts taxes. The act further deleted the word "franchise" from the third sentence, and substituted "1 cent" for "eight-tenths of 1 cent" in the third sentence.

Section 1403 of the act made the 1954 amendments effective November 1, 1954.

The act of July 19, 1954, amended subparagraph (e) by striking "and a badge numbered to correspond with the number of said license, neither of which shall" from the first sentence and substituting "which shall not"; and by striking from the second sentence "and a badge numbered to correspond with the number of said license neither of which shall" and substituting "at all times while the licensee is".

1951—The act of July 30, 1951, amended subsections (c) and (d) by substituting "March 1" for "March 15" and subsection (i) by changing the licensing date from "July 1" to "April 1" and adding the proviso.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

TRANSFER OF FUNCTIONS

Reorganization Order No. 22 of the Board of Commissioners dated December 2, 1952, appointed additional members to the Board of Revocation and Review of Hackers' Identification Licenses, and delegated to the Board of Revocation and Review of Hackers' Identification Licenses the power to suspend and revoke licenses issued under section 47-2331. It was further provided that in the event that the Director of Vehicles and Traffic denied an application for a license, the applicant would have a right of appeal to the Board of Revocation and Review.

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953, and made effective August 15, 1953, established under the direction and control of the Engineer Commissioner a Department of Vehicles and Traffic headed by a Director. The new department is to provide for the planning of traffic and parking

facilities and the administration of motor vehicle laws. The order abolished the previously existing Board of Revocation and Review of Hackers' Identification Cards and transferred its functions to the new department. The organization of the new department as set out in the order included a Board of Revocation and Review of Hackers' Identification Cards. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

NOTES TO DECISIONS

POWER TO LICENSE TAXICABS

Under statutes delegating to District of Columbia Public Utilities Commission power to regulate public utilities, Congress did not confer the power to grant or withhold licenses to operate taxicabs, but such power was delegated to Commissioners of the District of Columbia. *Associated Taxicabs Operators v. Hayes et al.* (1957, 99 U. S. App. D. C. 400, 240 F. 2d 638).

§ 47-2338 [20: 1738]. Guides.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2339. Secondhand dealers—Classification—Licensing—Stolen property.

(a) The Commissioners of the District of Columbia are authorized and empowered to classify dealers in secondhand personal property (referred to in this section as "dealers") and to fix and collect a license fee for each such class of dealer, which fee, in the judgment of the Commissioners, will be commensurate with the cost to the District of Columbia of inspection, supervision, and regulation of such class of dealer.

(b) In classifying dealers the Commissioners may take into consideration the kind of property dealt in, whether the property is retained by the dealer for sale at retail, whether the property is disposed of by the dealer out of the District of Columbia, whether the property is disposed of by the dealer as junk or otherwise, and such other criteria as the Commissioners may deem appropriate.

(c) Any person engaging in the business of buying, selling, trading, exchanging, or dealing in secondhand personal property of any description, including the return of unused portion of any ticket, order, or token purporting to evidence the right of the holder or possessor thereof to be transported by any railroad or other common carrier, however operated, from one State or Territory of the United States, or from the District of Columbia, to any other State or Territory of the United States or to the District of Columbia, shall be regarded as a dealer, and shall obtain the appropriate license and pay the fee therefor fixed by the Commissioners. For the purposes of this section, the term "secondhand personal property" shall not include any item of personal property (1) which the possessor thereof has acquired as part payment or allowance on the sale by such possessor of a new or rebuilt item of personal property, (2) which the possessor thereof has acquired by reason of its return to him for credit, refund, or exchange by a person having purchased such item from such possessor, or (3) which is offered for sale, trade, or exchange by the person who repossesses the same.

(d) When any property has been stolen and sold in the District of Columbia to a dealer under such circumstances that the Commissioners of the District of Columbia, after such dealer has been afforded a hearing, are satisfied that such dealer had cause to believe, or could have ascertained by reasonable inquiry or investigation that the property was stolen, and that the dealer did not make reasonable inquiry or investigation as to the title of the seller before making the purchase, the Commissioners are authorized and directed to revoke the license of such dealer; and this action shall not be a bar to criminal prosecution for receiving stolen goods: *Provided*, That nothing in this subsection shall be construed as prohibiting the Commissioners from suspending or revoking the license of such dealer under the authority contained in section 47-2345. (As amended July 3, 1956, eff. Nov. 1, 1956, 70 Stat. 491, ch. 511, § 1.)

AMENDMENTS

1956—Section 1 of the act of July 3, 1956, cited to text, amended the section to read as above set out.

EFFECTIVE DATE

1956—Section 3 of the act of July 3, 1956, cited to text, makes the amendment of this section effective on November 1, 1956.

§ 47-2340 [20: 1740]. Dealers in dangerous weapons.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2341 [20: 1741]. Private detectives.

TRANSFER OF FUNCTIONS

See note under section 4-103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 47-2344 [20: 1753]. Commissioners may regulate, modify, or eliminate license requirements.

NOTES TO DECISIONS

AMUSEMENT MACHINES

Under licensing statute authorizing Commissioners of District of Columbia, when in their discretion such is advisable, to require a license of other businesses or callings not listed specifically. Commissioners had power to require a license for mechanical amusements designed for use by public such as a mechanical amusement horse and was not discriminatory. *Abdow v. District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 374).

REGULATORY LICENSE

License required by police regulation, defining a mechanical amusement machine and providing that owners or operators of establishments in which mechanical amusement machines are offered for public use, shall obtain and pay an annual license fee as therein specified was one for regulation and not for revenue. *Abdow v. District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 374).

§ 47-2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of commissioners—Appropriations—Definitions.

TRANSFER OF FUNCTIONS

The Department of Occupations and Professions established under the direction and control of the Board of Commissioners by Reorganization Order No. 59 as amended, includes an Undertakers' Examining Committee. This new department is established for the purpose of performing functions of the District Government concerned with licensing, registering, and regulating certain

professions and occupations. The order is set out in the appendix to Title 1 along with the Reorganization Plan No. 5 of 1952.

§ 47-2345 [20:1754]. Promulgation of regulations authorized—Revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

(a) The Commissioners are further authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this chapter and to revoke any license issued hereunder when, in their judgment, such is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for any other reason they may deem sufficient.

(b) Notwithstanding any of the provisions of this section requiring an inspection as a prerequisite to the issuance of a license, the Commissioners are authorized to provide by regulation that any such inspection shall be made either prior or subsequent to the issuance of a license, but any such license, whether issued prior or subsequent to a required inspection, may be suspended or revoked for failure of the licensee to comply with the laws or regulations applicable to the licensed business, trade, profession, or calling.

(c) The Commissioners may in their discretion require that any class or subclass of licensees licensed under the authority of this section to engage in a business, trade, profession or calling involving an express or implied agreement to collect money for others shall give bond to safeguard against financial loss those persons with whom such class or subclass of licensees may so agree.

The bond which may be required by the Commissioners under the authority of this subparagraph shall be a corporate surety bond in an amount to be fixed by the Commissioners, but not to exceed \$15,000, conditioned upon the observance by the licensee and any agent or employee of said licensee of all laws and regulations in force in the District of Columbia applicable to the licensee's conduct of the business, trade, profession, or calling licensed under the authority of this section, for the benefit of any person who may suffer damages resulting from the violation of any such law or regulation by or on the part of such licensee, his agent or employee.

Any person aggrieved by the violation of any law or regulation applicable to a licensee's conduct of a business, trade, profession, or calling involving the collection of money for others shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on the bond authorized by this subparagraph (c), either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee and any agent or employee of said licensee which is in violation of law or regulation in force in the District of Columbia relating to the business, trade, profession, or calling licensed under this section; and the provisions of the second, third (except the last sentence thereof), and fifth subparagraphs of paragraph (b) of section 1-244,

shall be applicable to such bond as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1-244: *Provided*, That nothing in this subparagraph (c) shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries.

This subparagraph (c) shall not be applicable to persons when engaged in the regular course of any of the following professions or businesses:

- (1) Attorneys at law.
- (2) Persons regularly employed on a regular wage or salary, in the capacity of creditmen or in a similar capacity, except as an independent contractor
- (3) Banks and financing and lending institutions
- (4) Common carriers.
- (5) Title insurers and abstract companies while doing an escrow business.
- (6) Licensed real estate brokers.
- (7) Employees of any class or subclass of licensees required to give bond under this subparagraph (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 46; as amended July 3, 1956, 70 Stat. 491, ch. 511, § 2; Sept. 1, 1959, 73 Stat. 447, 448, Pub. L. 86-217, § 1.)

AMENDMENTS

1959—Act of September 1, 1959, cited to text, amended the section by adding subsection (c) thereto.

1956—Section 2 of the act of July 3, 1956, cited to text, amended the section by inserting (a) immediately before the first sentence thereof and by adding the matter designated as paragraph (b).

1932—The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

NOTES TO DECISIONS

DUE PROCESS

Revocation of taxicab operator's license by Board of Revocation and Review of Hackers' Identification Licenses, on ground he had sexually assaulted and robbed citizen at gun point, was violation of due process where hearing on charges was held while criminal charges based on same alleged offense were pending. *Mary A. Silver, Chairman, Board of Revocation and Review of Hackers' Identification Licenses, etc. v. Ernest L. McCamey* (1955, 95, U. S. App. D. C. 318, 221 F. 2d 873).

Temporary suspension of a license, unlike revocation, pending serious criminal charge, is not necessarily inconsistent with due process. *Id.*

§ 47-2347 [20:1756]. Penalties.

NOTES TO DECISIONS

FINES, EXCESSIVENESS

Where fine of \$150 imposed on one convicted of operating rooming house without a license was only half of the maximum permitted by statute, fine could not be termed excessive as a matter of law by Municipal Court of Appeals on appeal and could not be reduced. *Tillman v. District of Columbia* (D. C. Mun. App. 1950, 77 A. 2d 316).

Chapter 24.—BOARD OF TAX APPEALS

Sec.

47-2413. Overpayments—Board of Tax Appeals.

47-2414. Reestablishment of Board.

§ 47-2402 [20:973]. Board of Tax Appeals—District of Columbia Tax Court.

The commissioners shall appoint a board of one person, subject to removal by the commissioners, to

be called the "Board of Tax Appeals for the District of Columbia," which person shall be a citizen of the United States. Such person shall be appointed for the term of ten years, except such appointment as may be made for the remainder of an unexpired term. Any vacancy caused by death, resignation, or otherwise shall be filled by the commissioners only for an unexpired term. Such person shall be eligible for reappointment. Such person shall be an attorney and in active practice of law for at least ten years next preceding his appointment.

The salary of such person so appointed shall be \$17,500 per annum. The commissioners are authorized to employ such other personal services as may be necessary to carry out the provisions of this title and to provide for the expenses of the board. The salaries of employees other than the board shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, § 673), as amended, but such employees shall be appointed without regard to civil-service requirements. The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized.

The Board of Tax Appeals for the District of Columbia shall hereafter be known as the District of Columbia Tax Court and the member thereof shall be known as the judge of the District of Columbia Tax Court. The said District of Columbia Tax Court shall not be deemed or held to be a constituent member of the assessing or taxing authority of the District of Columbia but shall be deemed to be an independent agency, separate and apart from such assessing and taxing authority. All references in any statute (except this paragraph) to the Board of Tax Appeals or to the Board when used in the sense of the Board of Tax Appeals for the District of Columbia, or to the member thereof shall be considered to be made to the District of Columbia Tax Court and to the judge thereof, respectively.

Whenever the judge of the District of Columbia Tax Court shall be unable to hear and determine any case, or if said judge shall disqualify himself from hearing and determining any case, or if that office should become vacant, the Commissioners are authorized in their discretion to appoint any member in good standing of the bar of the United States District Court for the District of Columbia to hear and determine such case or cases in the place and stead of the duly appointed judge, or of the duly appointed judge who has vacated that office: *Provided*, That, if the office of judge of the District of Columbia Tax Court shall become vacant, no such vacancy shall be deemed to exist for the purposes of this paragraph after the expiration of one hundred and twenty days, except that the person appointed to fill the temporary vacancy may and shall determine all cases the hearing of which commenced within such one hundred and twenty days. Any person appointed under this paragraph to act in the place and stead of the duly appointed judge of the District of Columbia Tax Court, or so to act while that office is vacant, shall take the oath of office and shall be paid on a per diem basis in an amount to be deter-

mined by the Commisisoners and paid out of the annual appropriation for the District of Columbia Tax Court. No action taken under this paragraph shall operate to reduce the salary of the duly appointed judge of the District of Columbia Tax Court. No person employed by the United States or by the District of Columbia shall be appointed under this paragraph.

The judge of the District of Columbia Tax Court may hereafter retire—

(1) after having served as a judge of such court for a period or periods aggregating twenty years or more, whether continuously or not;

(2) after having served as a judge of such court for a period or periods aggregating ten years or more, whether continuously or not, and having attained the age of seventy years; or

(3) after having become permanently disabled from performing his duties, regardless of age or length of service.

Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by the chief judge of the United States District Court for the District of Columbia. The judge who retires under this section shall receive annually in monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the time of such retirement as a total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge. In no event shall the sum received by such judge hereunder be in excess of the salary of such judge at the time of such retirement. In computing the years of service under this section, service in the Board of Tax Appeals of the District of Columbia, as heretofore constituted, shall be included whether or not such service be continuous.

(a) The term "retire" as used in this section shall mean and include retirement, resignation, or failure of reappointment upon the expiration of the term of office of incumbent.

(b) Any judge receiving retirement salary other than for disability under the provisions of this section may be called upon by the Commissioners of the District of Columbia to perform such judicial duties as may be requested of him in said court, but in any event no such retired judge shall be required to render such service for more than ninety days in any calendar year after such retirement. In case of illness or disability precluding the rendering of such service such retired judge shall be fully relieved of any such duty during such illness or disability. (As amended July 10, 1952, 66 Stat. 547, ch. 649, § 5; as amended July 11, 1955, 69 Stat. 290, ch. 302, § 3; as amended July 2, 1956, 70 Stat. 485, ch. 494, § 1.)

AMENDMENTS

1956—Section 1 of the act of July 2, 1956, cited to text, amended the first paragraph of the section by striking out "for a term of four years" and inserting in lieu thereof the words "for the term of ten years" and by adding the new matter beginning with "The judge of the District Tax Court may hereafter retire"—to the end of subparagraph (b)

1955—The act of July 11, 1955, cited to text, increased the salary of the board member from \$13,000 to \$17,500.

EFFECTIVE DATE OF 1956 AMENDMENT

1956—Section 2 of the act of July 2, 1956, cited to text, provides that the amendment to the first paragraph of this section shall take effect after the expiration of the term of office of the present judge of the District of Columbia Tax Court.

COMPILER'S NOTE

1956—Section 1 of the act of July 2, 1956, cited to text, amended the section by adding the last four paragraphs thereto, although through inadvertence the act stated that the section was amended by "adding thereto the following new paragraph."

REFERENCE IN TEXT

The Classification Act of 1923 has been superseded by the Classification Act of 1949 which has been set out as sections 1071 to 1153 of title 5, and section 1138f of Title 12, United States Code.

NOTES TO DECISIONS

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged over-assessment, and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

MOTION TO DISMISS PETITION

Motion to dismiss petition for review of decision of District of Columbia Tax Court upon ground that petitioner was not party aggrieved within statute authorizing appeals from tax assessments by District of Columbia was of jurisdictional character and could be considered and decided notwithstanding fact that point was not raised in Tax Court. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

PERSONS AGGRIEVED

Generally an executor is not "person aggrieved" for purposes of an appeal to Tax Court unless either estate as whole is directly affected by decision appealed from, or unless his individual interests are directly and personally affected thereby. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759; see also same case at 226 F. 2d 763, where motion to substitute real party in interest was granted).

§ 47-2403 [20: 974]. Appeal from assessment—Payment under protest—Hearing and decision.

Any person aggrieved by any assessment by the District against him of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance-premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due thereon, to the collector of taxes of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. The board shall hear and determine all questions arising on said appeal and shall make separate findings of fact and conclusions of law, and shall render its decision thereon in writing. The board may affirm, cancel, reduce, or increase such

assessment. (As amended July 10, 1952, 66 Stat. 543, ch. 649, § 3 (a).)

AMENDMENTS

1952—The act of July 10, 1952, amended the section by deleting the provision that protest to the collector of taxes of the District of Columbia must be in writing.

NOTES TO DECISIONS

BURDEN OF ESTABLISHING MARKET VALUE

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute v. District of Columbia* (1957, 102 U. S. App. D. C. 83, 250 F. 2d 408).

EXEMPTION

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia v. District of Columbia* (1953, 92 U. S. App. D. C. 73, 202 F. 2d 808).

INTEREST OF EXECUTOR

In absence of showing that inheritance tax assessment was not payable by beneficiary out of her distributive share, or that tax had not been paid by beneficiary out of her distributive share, interest of executor of estate was not directly and personally affected by alleged over-assessment, and executor was not "person aggrieved" within statute allowing appeal by person aggrieved by alleged overassessment. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

MOTION TO DISMISS PETITION

Motion to dismiss Petition for review of decision of District of Columbia Tax Court upon ground that petitioner was not party aggrieved within statute authorizing appeals from tax assessments by District of Columbia was of jurisdictional character and could be considered and decided notwithstanding fact that point was not raised in Tax Court. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759).

PAYMENT

Where corporation delivered to examiner in office of District of Columbia Assessor of Taxes, checks in respect to business privilege tax assessed against corporation, and a letter protesting the tax, and Assessor's office handed on the checks to office of Collector of Taxes, there was sufficient payment of tax to Collector to permit an appeal by corporation to District of Columbia Board of Tax Appeals. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 U. S. App. D. C. 73, 204 F. 2d 29).

PAYMENT AS JURISDICTIONAL REQUIREMENT

The statutory requirement that one who appeals to the Board of Tax Appeals for the District of Columbia shall first pay such tax is jurisdictional. *Industrial Bank of Washington v. District of Columbia* (188 F. 2d 46, 88 U. S. App. D. C. 233).

PERSON AGGRIEVED

Though inheritance tax of District of Columbia on certain dispositions of property was technically not assessed against legatee, assessment was "against him" for all practical purposes where he was required under terms of will to pay same, and he could appeal under

statute as a "person aggrieved" by any assessment "against him." *District of Columbia v. Fenton M. Fadeley et al.* (1956, 98 U. S. App. D. C. 176, 233 F. 2d 667).

Generally an executor is not "person aggrieved" for purposes of an appeal to Tax Court unless either estate as whole is directly affected by decision appealed from, or unless his individual interests are directly and personally affected thereby. *National Bank of Washington v. District of Columbia* (1953, 96 U. S. App. D. C. 395, 226 F. 2d 759; see also same case at 226 F. 2d 763, where motion to substitute real party in interest was granted).

RIGHT TO APPEAL

Where donee's grandsons did not pay District of Columbia inheritance tax which was required by will to be paid by residuary legatee, they were not entitled to appeal from the assessment. *District of Columbia v. Fenton M. Fadeley et al.* (1956, 98 U. S. App. D. C. 176, 233 F. 2d 667).

TIME TO APPEAL, JURISDICTIONAL

Requirement that appeal be taken within 90 days after notice of assessment of realty tax is jurisdictional to the appeal. *Jewish War Veterans etc. v. District of Columbia* (1957, 100 U. S. App. D. C. 223, 243 F. 2d 646).

TOLLING OF TIME TO APPEAL

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Jewish War Veterans etc. v. District of Columbia* (1957, 100 U. S. App. D. C. 223, 243 F. 2d 646).

§ 47-2404 [20: 975]. Review by court—Procedure—Decision of board, when final—Modification or reversal.

(a) The decision of the Board may be reviewed by the court as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within thirty days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the court shall have the power to affirm, modify, or reverse the decision of the Board with or without remanding the case for hearing as justice may require. The court shall have the exclusive jurisdiction to review the decisions of the Board in the same manner and to the same extent as decisions of the United States District Court for the District of Columbia in civil actions tried without a jury; and the judgment of the court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari in the manner provided in title 28, United States Code, section 1254, as amended. The court is authorized to adopt rules for the filing of the record on review, the preparation of the record for review, and the conduct of the proceedings upon such review. (As amended July 10, 1952, 66 Stat. 544, ch. 649, § 3 (b).)

AMENDMENTS

1952—The act of July 10, 1952, substituted the present provision relating to review of decisions of the Board for one which provided for review by the Supreme Court only on writ of certiorari. The section previously provided for the power of the court to modify or reverse the decision of the Board if "the decision of the board is not in accordance with law". The following provision was deleted: "until the adoption of such rules, the rules of the court relating to appeals in cases of equity, so far as applicable, shall govern. The findings of fact by the board shall have the same effect as a finding by an equity court or a verdict of a jury."

NOTES TO DECISIONS

ADMINISTRATIVE REVIEW

Except in cases of absolute exemption, the tax exemption in each year is dependant on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Workshop Center of the Arts v. District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

CONCLUSIONS OF LAW

The District of Columbia Tax Court's conclusions of law, even if considered factual, are not binding on Court of Appeals if clearly erroneous. *District of Columbia v. Seven-Up Washington, Inc., District of Columbia v. Dr. Pepper Bottling Co., of Washington, D. C., Inc., District of Columbia v. Pepsi-Cola Bottling Co. of Washington, District of Columbia v. Pfan, District of Columbia v. Rock Creek Ginger Ale Co., Inc.* (1954, 93 U. S. App. D. C. 272, 214 F. 2d 197). Cert. denied June 1, 1954, 74 S. Ct. 851.

CONCLUSIVENESS OF FINDINGS

In proceeding for review of decision of District of Columbia Board of Tax Appeals that decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code, and that decedent had not retained domicile in state from which he had come to District of Columbia to work for the Government, findings of Board were required to be accepted when not clearly wrong. *Weitknecht v. District of Columbia* (1952, 90 U. S. App. D. C. 291, 195 F. 2d 570).

TIME FOR FILING PETITION

Where District of Columbia Board of Tax Appeals on April 30, 1951, rendered decision on corporation's appeal in respect to business privilege tax, and corporation filed review petition which was served on District of Columbia on May 31 shortly before Board closed its office at 4:45 p. m., and the District with knowledge of sole member of Board, who had been consulted by telephone at his home, put cross-petition for review under door of Board's office an hour later, District's cross-petition was timely filed within statute requiring petition for review to be filed by District or taxpayer within 30 days after decision. *Owens-Illinois Glass Co. v. District of Columbia, District of Columbia v. Owens-Illinois Glass Co.* (1953, 92 U. S. App. D. C. 15, 204 F. 2d 29).

§ 47-2405 [20: 976]. Appeals of real estate assessments.

Any person aggrieved by any assessment, equalization, or valuation made may within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2404 and 47-2413: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal.

Any person aggrieved by any assessment or valuation made in pursuance of this paragraph may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections

47-2404 and 47-2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with this subsection, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any assessment made in pursuance of section 47-711 may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2404 and 47-2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with this subsection, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any reassessment made in pursuance of section 47-712, may within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47-2403, 47-2404.

Any person aggrieved by a reassessment or redistribution made pursuant to section 47-716, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47-2403, 47-2404. (As amended July 10, 1952, 66 Stat. 544, ch. 649, § 3 (c).)

AMENDMENTS

1952—The act of July 10, 1952, amended the first paragraph by adding to the proviso the provision removing the necessity of complaint where no notice is given the taxpayer prior to March 1; amended the proviso to the second paragraph which had previously read: "That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided"; amended the proviso in the third paragraph which previously read: "That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided".

§ 47-2410 [20: 979b]. Certain suits forbidden.

NOTES TO DECISIONS

ADEQUATE REMEDY AT LAW

Where taxpayer had an adequate remedy at law by payment of the gross receipts tax, claim for refund, and either appeal to the District of Columbia Tax Court or civil action therein, suit for injunction against collection of the tax would not lie. *D. C. Transit System Inc. v. Pearson, Collector of Taxes etc., et al.* (1957, 102 U. S. App. D. C. 102, 250 F. 2d 765).

BASIS FOR INJUNCTION

Fact that owner of household furniture and personal effects, and that holder of lien on such personalty, considered costs incurred in proceedings for collection for personal property taxes against personalty to be excessive, did not provide basis to enjoin Collector of Taxes from having personalty sold for personal property taxes, at least where there was no showing that there were no appropriate remedies at law. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

IN GENERAL

Where plaintiff in action to enjoin sale of furniture and personal effects for property taxes had only a lien on

property, so that plaintiff's claims furnished no basis for saying distraint was illegal, and Collector of Taxes had given assurances that sale would be subject to outstanding liens, sale would not be enjoined. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

OFFER OF PAYMENT

Where holder of liens on household furniture and personal effects offered to give Collector of Taxes an uncertified check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, Collector was justified in refusing to stay orderly course of collection proceedings, and refusal to Collector to accept offer did not preclude sale of personalty for taxes. *Pearson v. Laughlin* (1951, 89 U. S. App. D. C. 130, 190 F. 2d 658).

WHEN SUIT MAY BE MAINTAINED

Statutory ban against injunction to restrain collection of taxes is more honored in the breach than in the observance, and upon a showing of considerations that appeal to discretion of court of equity, suit for injunction may be entertained and determination of validity of tax made in such summary and expeditious manner. *D. C. Transit System, Inc. v. Pearson et al.* (1957, 149 F. Supp. 18).

Where District of Columbia was seeking to collect gross receipts tax from successor of recipient, action to enjoin distraint of successor's property to enforce payment could be maintained. *Id.*

§ 47-2413. Overpayments—Board of Tax Appeals.

(a) Where there has been an overpayment of any tax, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the date the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or if no claim is filed, then during the two years immediately preceding the allowance of the refund. Every claim for refund must be in writing, under oath, must state the specific grounds upon which the claim is founded and must be filed with the Assessor. If the Assessor disallows all or any part of the claim for refund, he shall send to the taxpayer by registered mail a notice of such disallowance. Within ninety days after the mailing of the notice of disallowance, if the claim is acted upon within six months after the filing thereof, or within ninety days after the termination of such six months' period, if the claim is not acted upon within such period, the taxpayer may appeal to the Board, in the same manner and to the same extent as set forth in sections 47-2403 and 47-2404: *Provided*, That this subsection shall not apply to the taxes imposed by title II, District of Columbia Revenue Act of 1939, as amended; by the District of Columbia Income and Franchise Tax Act of 1947, as amended; or by sections 47-2601 to 47-2629 and sections 47-2701 to 47-2713, refunds of which are otherwise provided for by law; and that it shall not apply to the real-estate tax.

(b) In any proceeding under this chapter, the Board of Tax Appeals for the District of Columbia shall have jurisdiction to determine whether there

has been any overpayment of tax and to order that such overpayment be credited or refunded to the taxpayer: *Provided*, That a timely refund claim has been filed. Where a notice of assessment is mailed to the taxpayer on or before the last day on which a timely claim for refund could be filed, an appeal filed within ninety days after the mailing of such notice asserting an overpayment shall, for the purposes of this subsection, be deemed to be a timely claim for refund.

(c) The remedies provided to the taxpayer under this chapter shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit for the recovery of an overpayment of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such overpayment with the Board of Tax Appeals for the District of Columbia under this title.

(d) Any other provision of law to the contrary notwithstanding, if it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court having jurisdiction over the subject matter that there has been an overpayment of any tax, whether as a deficiency or otherwise, interest shall be allowed and paid upon such overpayment of tax at the rate of 4 per centum per annum from the date such overpayment was paid until the date of refund: *Provided*, That with respect to that part of any overpayment which was not assessed and paid as a deficiency or as additional tax such interest shall be allowed and paid only from the date of filing a claim for refund, a petition to the Board, or a complaint with a court of competent jurisdiction, as the case may be.

(e) For the purposes of this section, any interest or penalties paid by the taxpayer in connection with an overpayment of tax shall be deemed to be a part of such overpayment of tax. (July 10, 1952, 66 Stat. 546, ch. 649, § 4.)

COMPILER'S NOTE

Section 1 of the act of July 16, 1947, affected title II of the District of Columbia Revenue Act of 1939 as follows:

"The District of Columbia Income Tax Act as approved and enacted July 26, 1939, and as amended, is hereby repealed with respect to taxable years or portions thereof beginning on and after the 1st day of January 1947 for all purposes, except the following purposes in connection with taxes due or accrued under said District of Columbia Income Tax Act:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of such Act and the regulations prescribed thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by such Act;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by such Act, and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of such Act."

The District of Columbia Income and Franchise Tax Act of 1947 was set out as chapter 15 of title 47 and as sections 47-1901b, 40-201, 40-203, 40-204, 43-1502a, 43-1511a, 47-2501a.

NOTES TO DECISIONS

CLAIMS FOR TAX REFUND—LIMITATION

Where claim for refund of a District of Columbia estate tax was not filed within two years of payment of the tax, Tax Court had no jurisdiction to decide anything, and if it had jurisdiction it had no authority to do otherwise than deny petitioner's claim in view of statute providing no refund of an overpayment shall be allowed after two years from date the tax is paid unless before the expiration of such period, claim therefor is filed by the taxpayer. *American Security and Trust Co. etc. v. District of Columbia* (1956, 98 U. S. App. D. C. 260, 235 F. 2d 19).

§ 47-2414. Reestablishment of Board.

Notwithstanding the provisions of the Reorganization Act of 1949 and notwithstanding the provisions of Reorganization Plan Numbered 5 of 1952, relating to the District of Columbia, the Board of Tax Appeals for the District of Columbia shall not be abolished, and, if prior to July 10, 1952, it has been abolished, it is hereby reestablished. In either event, the functions of the said Board of Tax Appeals transferred to the Board of Commissioners of the District of Columbia by said Reorganization Plan Numbered 5 of 1952 are hereby retransferred to said Board of Tax Appeals or to said Board of Tax Appeals as hereby reestablished, to be exercised in the same manner, to the same extent, and under the same provisions of law as if said Reorganization Plan Numbered 5 had never gone into effect, except only as such provisions of law may be modified by this Act.¹

All petitions, answers, or other pleadings, documents, or papers filed with, and all actions taken by, and all decisions rendered by, the person, persons, office, or agency to which said Board of Commissioners may have redelegated the functions of said Board of Tax Appeals, between the effective date of said Reorganization Plan Numbered 5 and July 10, 1952, shall have the same force and effect for all purposes as if filed with, taken by, or rendered by, said Board of Tax Appeals or said Board of Tax Appeals as hereby reestablished.

If, prior to July 10, 1952, the said Board of Tax Appeals shall have been abolished, the said Board of Commissioners shall appoint an individual to act as the member of the said Board of Tax Appeals as hereby reestablished, said appointment to be made in accordance with the provisions of section 47-2402. (July 10, 1952, 66 Stat. 547, ch. 649, § 7.)

REFERENCE IN TEXT

The Reorganization Act of 1949 is set out as sections 133z to 133z-15 of Title 5, U. S. Code.

Chapter 25.—MISCELLANEOUS PROVISIONS

Sec.

47-2501b. Additional annual payment by the United States.

§ 47-2501 [20:971a]. Authorization for advance of funds by Secretary of Treasury.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropri-

¹ The act of July 10, 1952, is set out as follows: sections 47-1408, 47-1619, 46-304, 47-2624, 47-1538, 47-1540, 47-1541, 47-2403, 47-2404, 47-708, 47-709, 47-2405, 47-710, 47-711, 47-2413, 47-2402, 47-304, 47-2414.

ation Act, approved June 29, 1922, is authorized and directed to advance, on the requisition of the Commissioners of the District of Columbia, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the general expenses of said District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of taxes and revenue collected for the support of the government of the said District of Columbia. (Aug. 17, 1937, 50 Stat. 692, ch. 690, § 2, title VII; May 16, 1938, 52 Stat. 369, ch. 223, § 7; July 26, 1939, 53 Stat. 1118, ch. 367, title VI; March 2, 1940, 54 Stat. 39, ch. 37, § 3; June 27, 1942, 56 Stat. 460, ch. 452, § 11; June 28, 1944, 58 Stat. 533, ch. 300, § 14.)

AMENDMENTS

1944—The act of June 28, 1944, amended the section by striking “until and including June 30, 1944,” from the beginning of the first sentence. This amendment was not shown in the 1951 edition of the Code.

§ 47-2501b. Additional annual payment by the United States.

(a) There are hereby authorized to be appropriated, in addition to the sums appropriated under section 47-2501a, as annual payments by the United States toward defraying the expenses of the government of the District of Columbia, the sum of \$9,000,000 for each of the fiscal years 1955 and 1956, the sum of \$12,000,000 for each of the fiscal years 1957 and 1958, and the sum of \$21,000,000 for the fiscal year 1959 and for each fiscal year thereafter: *Provided*, That so much of the aggregate annual payments by the United States appropriated under this article to the credit of the general fund as is in excess of \$13,000,000 for each of the fiscal years 1955 and 1956, \$16,000,000 for each of the fiscal years 1957 and 1958, and \$25,000,000 for the fiscal year 1959 and subsequent fiscal years shall be available for capital outlay only, and then on a cumulative total basis only to the extent of not more than 50 per centum of the cumulative total of capital outlay appropriations payable from such general fund which becomes available for expenditure on and after July 1, 1954.

(b) If in any fiscal year or years a deficiency exists between the amount appropriated and the amount authorized by this article to be appropriated, additional appropriations are hereby authorized for subsequent fiscal years to pay such deficiency or deficiencies.

(c) The payments authorized by this section shall be credited to the General Fund of the District of Columbia. (July 16, 1947, 61 Stat. 361, ch. 258, Art. VI, § 2, as added May 18, 1954, 68 Stat. 113, ch. 218, title VII; as amended March 31, 1956, 70 Stat. 83, ch. 154, § 401; as amended June 6, 1958, 72 Stat. 183, Pub. L. 85-451, § 2.)

AMENDMENTS

1958—Act of June 6, 1958, cited to text, amended subsection (a) to read as above set out.

1956—Section 401 of the act of March 31, 1956, cited to text amended the section to read as above set out.

APPLICABILITY TO OFFICERS OR AGENCIES OF DISTRICT

Section 603 of the act of March 31, 1956, Public Law 460, ch. 154, a part or parts of which are classified to § 47-2501b provides as follows: “Wherever any officer or agency of the District, other than the Commissioners of the District of Columbia, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan No. 5 of 1952.”

CROSS REFERENCE

Commissioners’ authority to make regulations under act of May 18, 1954, see § 43-1618.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

DEFINITIONS

Section 3 of the act of June 6, 1958, cited to text, provides: “As used in this Act the term ‘District’ means the District of Columbia and the term ‘Commissioners’ means the Board of Commissioners of the District of Columbia.”

§ 47-2502 [20: 971b]. Regulations.

CROSS REFERENCE

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

§ 47-2503 [20: 971c]. Separability provisions.

SEPARABILITY CLAUSE

1956—Section 602 of the act of March 31, 1956, Public Law 460, ch. 154, part of which is classified to section 47-2501b, provides as follows: “If any provisions of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.”

Chapter 26.—GROSS SALES TAX

§ 47-2601. Definitions.

* * * * *

7. “Food” means cereals and cereal products; milk and milk products, including ice cream; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit, fruit products, and fruit juices; soft drinks; spices and salt; flavoring extracts and condiments; sugar and sugar products; coffee and coffee substitutes; tea; cocoa and cocoa products; and ice: *Provided, however*, That the word “food” shall not include spiritous or malt liquors and beer.

* * * * *

14. (a) “Retail sale” and “sale at retail” mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

(1) The sale of any meals, food or drink or other like tangible personal property for a consideration.

(2) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(3) The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.

(4) The sale of natural or artificial gas, oil, electricity, solid fuel, or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing, or refining.

(5) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(6) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event, for the purposes of this title, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however,* That the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale: *Provided further,* That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale.

* * * * *

16. (a) "Sales price" means the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses or any other expenses.

(3) The cost of transportation of the property prior to its sale at retail. The total amount of the sales price includes all of the following: a. Any services that are a part of the sale. b. Any amount for which credit is given to the purchaser by the vendor.

(4) Amounts charged for any cover, minimum, entertainment, or other service in hotels, restaurants, cafes, bars, and other establishments where meals, food, or drink, or other like tangible personal property is furnished for a consideration.

17. "Sale" and "selling" mean any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred by any means whatsoever, including rental, lease, license, or right to reproduce or use, for a consideration, by a vendor to a purchaser, or any transaction whereby services subject to tax under this title are rendered for consideration or are sold to any purchaser by any

vendor, and shall include, but not be limited to, any "sale at retail" as defined in this title. Such consideration may be either in the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, in the future, or by installments.

* * * * *

(May 27, 1949, 63 Stat. 112, ch. 146, title I, §§ 101 to 124; May 18, 1954, 68 Stat. 117, ch. 218, title XIII, §§ 1301, 1302; as amended March 31, 1956, 70 Stat. 80, ch. 154, title II, §§ 201, 202, 203.)

AMENDMENTS

1956—Section 201 of the act of March 31, 1956, cited to text, amended paragraph 14 (a) (6) to read as above set out.

Section 202 of the same act amended par. 16 (a) by adding the new subparagraph (4).

Section 203 of the same act amended par. 17 to read as above set out.

1954—The act of May 18, 1954, amended paragraph 7 by striking the word "bottled" preceding "soft drinks" and deleting the words "when used for household consumption" just prior to the proviso. The proviso was amended so as to only refer to spiritous or malt liquors and beer.

The act also amended subparagraph 14 (a) (1) to eliminate the references to places of sale, and the fact that the food was sold for "consumption."

The act of May 18, 1954, provided that the provisions of sections 1301 to 1308 of that act would become effective on and after August 1, 1954.

EFFECTIVE DATE OF AMENDMENT

1956—Section 206 of the act of March 31, 1956, cited to text made the amendments effective on the first day of the first month which begins on or after the sixtieth day after the date of enactment of this act, which makes the effective date June 1, 1956.

APPLICABILITY TO OFFICERS OR AGENCIES OF DISTRICT

Section 603 of the act of March 31, 1956, Public Law 460, ch. 154, a part or parts of which are classified to sections 47-2601, 47-2605, and 47-2701 provides as follows: "Wherever any officer or agency of the District, other than the Commissioners of the District of Columbia, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency or agencies succeeding to the functions of the offices or agency so mentioned, pursuant to Reorganization Plan No. 5 of 1952."

SEPARABILITY CLAUSE

1956—Section 602 of the act of March 31, 1956, Public Law 460, ch. 154, parts of which were classified to sections 47-2601 and 47-2605, provides as follows: "If any provisions of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."

CROSS REFERENCE

Commissioners' authority to make regulations under act of May 18, 1954, see § 43-1618.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

NOTES TO DECISIONS

BEST EVIDENCE RULE

In prosecution for violations of District of Columbia Sales Tax Act, error, if any, in refusing to exclude testimony of government witness on ground that best evidence rule precluded his testimony as to certain Federal alcohol tax stamp records was cured by subsequent admission in evidence of the records, the contents of which were not at variance with witness' testimony. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

INSTRUCTIONS TO JURY

In action for treble damages under Robinson-Patman Act based on alleged book sales to plaintiff's competitors at preferential prices and terms, plaintiff's requested instruction on certificates of exemption under Sales Tax Law was properly rejected as too involved and obscure. *Students Book Co. v. Washington Law Book Co.* (1956, 98 U. S. App. D. C. 49, 232 F. 2d 49; cert. denied 76 S. Ct. 474).

PRIVILEGE

Treasury Department Regulation prohibiting disclosure of official information was promulgated for benefit of the United States Government, and the privilege against disclosure of official information could be claimed by the government alone, not by defendant in prosecution for violation of Columbia Sales Tax Act, and, therefore, testimony of Internal Revenue Agents concerning defendant's admissions to them in course of Federal tax violation investigation was proper. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for violation of District of Columbia Sales Tax Act. *James A. Scott, Jr., v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

§ 47-2602. Imposition of tax.

Beginning on and after August 1, 1949, for the privilege of selling certain tangible personal property at retail sale and for the privilege of selling certain selected services defined as sales at retail in this chapter, a tax is hereby imposed upon all vendors at the rate of 2 per centum of the gross receipts of any vendor from the sale of such tangible personal property and services: *Provided*, That the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the gross receipts from such sales, and that the rate of tax with respect to sales or charges for any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients shall be 3 per centum of the gross receipts from such sales. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 125; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1303.)

AMENDMENT

1954—The act of May 18, 1954, amended the section by the addition of the proviso.
The act of May 18, 1954, provided that the provisions of sections 1301 to 1308 of that act would become effective on and after August 1, 1954.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

CONSTITUTIONALITY

The imposition of a new tax or increase in the rate of an old one is one of the usual hazards of business, and it does not ordinarily impair the obligation of a pre-existing contract. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882, certiorari denied, Nov. 30, 1953, 346 U. S. 900).

PRIOR CONTRACT

Where personal property was purchased by contractor subsequent to passage of District of Columbia Sales Tax Act, fact that construction contracts with reference to which purchases were made had been entered into before passage of the Act did not absolve contractor from payment of the use tax, since it is the purchase or use itself, and not the signing of the contracts ultimately necessitating the purchase, which is the taxable event. *John McShain, Inc. v. District of Columbia* (1953, 92 App. D. C. 358, 205 F. 2d 882).

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

§ 47-2604. Rate of tax.

For the purpose of collecting his reimbursement as provided in section 47-2603 insofar as it can be done and yet eliminate the fractions of a cent, the vendor shall add to the sales price and collect from the purchaser the following amounts:

- (a) On each sale, other than sales of food for human consumption off the premises where such food is sold, and other than sales or charges for rooms, lodgings, or accommodations furnished to transients, where the sales price is from 14 cents to 63 cents, both inclusive, 1 cent; on each such sale where the sales price is from 64 cents to \$1.13, both inclusive, 2 cents; and on each 50 cents of sales price or fraction thereof of such sale in excess of \$1.13, 1 cent.
- (b) On each sale of food for human consumption off the premises where such food is sold where the sales price is from 28 cents to \$1.27, both inclusive, 1 cent; on each such sale where the sales price is from \$1.28 to \$2.27, both inclusive, 2 cents; and on each \$1 of sales price or fraction thereof of such sale in excess of \$2.27, 1 cent.
- (c) On each sale or charge for rooms, lodgings, or accommodations, furnished to transients, 3 per centum of the sales price.

* * * * *

(May 27, 1949, 63 Stat. 115, ch. 146, title 1, § 127; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1304.)

AMENDMENTS

1954—The act of May 18, 1954, amended subsections (a), (b), and (c) so that food sold for consumption off the premises is no longer exempted and such food is taxed at 1 percent, and the rate of tax on accommodations furnished to transients is increased from 2 percent to 3 percent.
Section 1309 of the act of May 18, 1954, provided that the provisions of sections 1301 to 1308 of that act would become effective on and after August 1, 1954.

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43-1618.

§ 47-2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

- (a) Sales to the United States or the District or any instrumentality thereof except sales to national banks and Federal savings and loan associations.
- * * * * *

(d) (1) Repealed.

(2) Repealed.

* * * *

(n) Sale of motor vehicles and trailers which are subject to the provisions of title III of the District of Columbia Revenue Act of 1949. (Sections 40-603j and note 40-603-1.)

* * * *

(r) Sales of material to be incorporated permanently in any war memorial authorized by Congress to be erected on public grounds of the United States.

(May 27, 1949, 63 Stat. 115, ch. 146, title I, § 128; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1305 as amended, March 31, 1956, 70 Stat. 81, ch. 154, § 204; July 3, 1957, 71 Stat. 276, Pub. L. 85-82, § 1.)

AMENDMENTS

1957—The act of July 3, 1957, amended the section by adding subsection (r) thereto.

1956—Section 204 (b) of the act of March 31, 1956, cited to text, amended subsection (n) to read as above set out.

1954—The act of May 18, 1954, amended subsection (a) by eliminating the exemption applicable to national banks and Federal savings and loan associations. The act also amended subsection (d) by repealing paragraph (1) of the subsection relating to sale of food for consumption off the premises where the food was sold, and by changing the exemption for meals from \$1.25 to 50 cents in paragraph (2) of the section.

Section 1309 of the act of May 18, 1954, provided that the provisions of title XIII (sections 1301-1309) would become effective on and after August 1, 1954.

EFFECTIVE DATE OF 1957 AMENDMENT

Section 2 of the act of July 3, 1957, provided that subsection (r) shall be effective only with respect to sales taking place on and after January 1, 1957.

EFFECTIVE DATE OF AMENDMENT

1956—Section 206 of the act of March 31, 1956, cited to text, made the amendment effective on the first day of the first month which begins on or after the sixtieth day after the date of enactment of this act (June 1, 1956).

CROSS REFERENCE

Commissioners' authority to make regulations under act of May 18, 1954, see § 43-1618.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

REPEAL

1956—Section 204 (a) of the act of March 31, 1956, 70 Stat. 68, repealed section 47-2605 (d) (2) dealing with the sale of food for human consumption in hotels, restaurants, etc.

NOTES TO DECISIONS

CONTRACTS PRIOR TO DATE OF APPROVAL OF ACT

Provision of District of Columbia Sales Tax Act exempting sales of goods made pursuant to contracts entered into before date of approval of act, if there is contract in writing which imposes unconditional liability on part of purchaser to buy goods covered at fixed price and on vendor to deliver a definite quantity of such goods at contract price, did not exempt purchases made by contractor pursuant to construction contracts with United States and District of Columbia, when there was no proof of any contracts in writing, other than the three construction contracts, since relationships between parties to those contracts were not those of purchasers and vendors. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882, certiorari denied, Nov. 30, 1953, 346 U. S. 900).

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

SALES TO UNITED STATES OR DISTRICT

Provision of District of Columbia Sales Tax Act exempting sales to the United States or District or any instrumentality thereof, did not exempt from taxation purchases made by private contractor of materials and supplies for use in construction contracts with United States and District of Columbia, since when contractor purchased such materials, neither it nor its vendor was making sales of tangible personal property to the United States or the District. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882).

Government regulations pertaining to Sales and Use Taxes under District of Columbia Sales Tax Act, declaring that where contractor enters into construction contract with United States or District, contractor may purchase such materials and supplies as are to be physically incorporated in and become real property without payment of tax, means that the material must be physically present or incorporated in the structure, and it does not exempt from taxation products consumed in the course of construction. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882).

§ 47-2607. Presumption of taxability.

NOTES TO DECISIONS

INSTRUCTIONS TO JURY

In action for treble damages under Robinson-Patman Act based on alleged book sales to plaintiff's competitors at preferential prices and terms, plaintiff's requested instruction on certificates of exemption under Sales Tax Law was properly rejected as too involved and obscure. *Students Book Co. v. Washington Law Book Co.* (1956, 98 U. S. App. D. C. 49, 232 F. 2d 49; cert. denied 76 S. Ct. 474).

§ 47-2609. Tax a preferred claim—Priority over property taxes.

NOTES TO DECISIONS

ASSIGNMENT FOR BENEFIT OF CREDITORS

The District of Columbia statute giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt gives landlord a specific lien on specific property, and hence landlord had priority for payment out of assets which were in hands of assignee for benefit of creditors and which consisted of proceeds of sale of such chattels over tax claims of United States and of District of Columbia whose rights of priority were to be paid out of general assets. *Re assignment of Lobel Enterprises, Inc.* (1954, 126 F. Supp. 792).

DISTRICT TAX CLAIMS

District of Columbia Revenue Act provision giving priority to District for unpaid gross sales taxes against a taxpayer in bankruptcy before all claimants of whatsoever kind or nature and making penalties and interest a prior and preferred claim gives District a priority in whatever local insolvency proceedings are instituted where bankrupt person or corporation involved is not eligible to become a bankrupt under the Bankruptcy Act. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 2d 633).

PRIORITY OF CLAIMS

The District of Columbia local statute giving District a preferred claim for sales and use taxes when assignment is made for benefit of creditors, being a more specific and more limited enactment, creates an exception to general federal statute giving priority to the United States in payment of claims against insolvent debtor, and, hence, District's claim for unpaid sales and compensating use taxes was entitled to priority over tax claim of United

States in respect to payment out of assets in hands of assignees for benefit of creditors. *United States v. Harry Saidman, Trustee, etc.* (1956, 97 U. S. App. D. C. 344, 231 F. 2d 503).

The 1949 District of Columbia local statute giving District a preferred claim for taxes when assignment is made for benefit of creditors has created an exception to 1797 general federal statute providing that insolvent person's debts due to United States shall be first satisfied, and hence District's tax claim had priority over tax claim of United States in respect to payment out of assets in hands of assignees for benefit of creditors. *Re assignment of Lobel Enterprises, Inc.* (1954, 126 F. Supp. 792).

PRIORITY OF TAX CLAIMS

"Bankruptcy", within District of Columbia Revenue Act provision that claims under Revenue Act should be a prior and preferred claim in cases where taxpayer is placed in receivership or bankruptcy, embraces only proceedings under local insolvency acts, and does not override Bankruptcy Act provision giving priority to taxes only after expenses of administration, wage claims and certain creditor expenses and barring allowance of penalties, and District's claims for sales taxes and penalties were not entitled to priority. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 2d 633).

§ 47-2620. Rules and regulations.

REGULATIONS

1956—Section 601 of the act of March 31, 1956, Public Law 460, ch. 154, parts of which have been classified to sections 47-2601 and 47-2605, provides as follows: "The Commissioners of the District of Columbia are authorized to make rules and regulations to carry out the provisions of this Act."

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

§ 47-2623. Certificate of registration.

NOTES TO DECISIONS

BEST EVIDENCE RULE

In prosecution for violations of District of Columbia Sales Tax Act, error, if any, in refusing to exclude testimony of government witness on ground that best evidence rule precluded his testimony as to certain Federal alcohol tax stamp records was cured by subsequent admission in evidence of the records, the contents of which were not at variance with witness' testimony. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

PRIVILEGE

Treasury Department Regulation prohibiting disclosure of official information was promulgated for benefit of the United States Government, and the privilege against disclosure of official information could be claimed by the government alone, not by defendant in prosecution for violation of District of Columbia Sales Tax Act, and, therefore, testimony of Internal Revenue Agents concerning defendant's admissions to them in course of Federal tax violation investigation was proper. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for violation of District of Columbia Sales Tax Act. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

§ 47-2624. Penalties and interest.

(a) Any person failing to file a return or who files a false or incorrect return or who fails to pay any tax to the Collector within the time required by this chapter shall be subject to a penalty of 5 per centum of the amount of tax due, plus interest at the rate of one-half of 1 per centum of such tax for each

month of delay after such return was required to be filed or such tax became due; but the Assessor, if satisfied that the delay was excusable may waive the penalty of 5 per centum. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The interest provided for in this section shall be applicable to any tax determined by the Assessor as a deficiency.

• • • • •
(As amended July 10, 1952, 66 Stat. 543, ch. 649, § 2 (c).)

AMENDMENTS

1952—The act of July 10, 1952, made the following changes in subsection (a): substituted "one-half of 1 per centum" for "1 per centum"; substituted "the Assessor, if satisfied that the delay was excusable may waive the penalty of 5 per centum" for "the Assessor, if satisfied that the delay was excusable, may waive all or any part of such penalty in excess of interest at the rate of 6 per centum per year". The provision excepting the first month after the return was required from the interest rate on the penalty was deleted.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 8 of the act of July 10, 1952, cited to text, provided "the amendments made by section 2 of this act shall be effective July 1, 1952."

REORGANIZATION PLAN

Reorganization Plan No. 5 is set out in the appendix to Title 1.

NOTES TO DECISIONS

PENALTY BARRED BY BANKRUPTCY ACT

District of Columbia's claim against bankrupt for one percent per month payment on delinquent personal property taxes was, since in excess of legal interest rate and designated by statute a penalty, a "penalty" rather than "interest" and was barred by Bankruptcy Act. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 2d 633).

PRIORITY OF TAX CLAIMS

"Bankruptcy", within District of Columbia Revenue Act provision that claims under Revenue Act should be a prior and preferred claim in cases where taxpayer is placed in receivership or bankruptcy, embraces only proceedings under local insolvency acts, and does not override Bankruptcy Act provision giving priority to taxes only after expenses of administration, wage claims and certain creditor expenses and barring allowance of penalties, and District's claims for sales taxes and penalties were not entitled to priority. *District of Columbia v. Samuel M. Greenbaum, Trustee etc.* (1955, 96 U. S. App. D. C. 168, 223 F. 2d 633).

§ 47-2625. Failure to file return.

NOTES TO DECISIONS

ATTORNEY AND CLIENT

Defendant's former attorney, who, in criminal proceeding, was representing, at same time, both defendant and government's principal witness against defendant, could not have given defendant the undivided and undiluted fidelity to which defendant was entitled, and, therefore, new trial would be ordered following defendant's conviction for violation of Sales Tax Act. *Scott v. District of Columbia* (D. C. Mun. App. 1954, 99 A. 2d 641).

BEST EVIDENCE RULE

In prosecution for violations of District of Columbia Sales Tax Act, error, if any, in refusing to exclude testimony of government witness on ground that best evidence rule precluded his testimony as to certain Federal alcohol tax stamp records was cured by subsequent admission in evidence of the records, the contents of which were not at variance with witness' testimony. *James A. Scott, Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

DEFENSES

In prosecution of operator of automobile body works for failing to file monthly Sales and Use tax returns as required by statute, fact that others who allegedly violated statute were not proceeded against by Assessor of Taxes was no defense. *Perlich v. District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

FINES AND IMPRISONMENT

Where trial court imposed a money fine against defendant operator of automobile body works for failure to file monthly Sales and Use tax returns as required by statute, trial court under statute could enforce payment of fine by ordering defendant in the alternative to serve a jail sentence. *Perlich v. District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

JURY TRIAL

In prosecution of operator of an automobile body works for failing to file monthly Sales and Use tax returns as required by statute, defendant was not entitled to jury trial as matter of right in view of fact that such statutory offense is essentially petty in nature, does not involve moral turpitude, and would not be indictable at common law. *Perlich v. District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

PRIVILEGE

Treasury Department Regulation prohibiting disclosure of official information was promulgated for benefit of the United States Government, and the privilege against disclosure of official information could be claimed by the government alone, not by defendant in prosecution for violation of District of Columbia Sales Tax Act, and, therefore, testimony of Internal Revenue Agents concerning defendant's admissions to them in course of Federal tax violation investigation was proper. *James A. Scott Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

QUESTIONS ON APPEAL

An operator of automobile body works who was convicted of failing to file monthly Sales and Use tax returns as required by statute could not for first time on appeal claim that prosecution was illegal because of absence of signature on information of assistant to corporation counsel attesting oath of complaining witness. *Perlich v. District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

SUFFICIENCY OF EVIDENCE

Evidence was sufficient to sustain conviction for violation of District of Columbia Sales Tax Act. *James A. Scott Jr. v. District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 579).

WAIVER OF OFFENSE

In prosecution of operator of automobile body works for failing to file monthly Sales and Use tax returns as required by statute, whether Government had waived offense, as alleged by defendant who claimed that though defendant was late in filing defendant was told by a tax official that matter would be dropped if defendant filed return, was for jury. *Perlich v. District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

Chapter 27.—COMPENSATING USE TAX**§ 47-2701. Definitions.**

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the

form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

(1) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(2) The sale of natural or artificial gas, oil, electricity, solid fuel or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing or refining.

(3) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(4) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event for the purposes of this title, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however*, That the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale: *Provided further*, That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale.

(5) The sale of any meals, food or drink, or other like tangible personal property for a consideration.

* * * * *

(May 27, 1949, 63 Stat. 124, ch. 146, title II, §§ 201 to 211; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1306 as amended March 31, 1956, 70 Stat. 81, ch. 154, § 205.)

AMENDMENTS

1956—Section 205 of the act of March 31, 1956, cited to text, amended paragraph 1 (a) (4) of this section to read as above set out.

1954—The act of May 18, 1954, amended subsection (a) of section 47-2701 by adding subparagraph (5).

The amendment became effective on August 1, 1954.

EFFECTIVE DATE OF AMENDMENT

1956—Section 206 of the act of March 31, 1956, cited to text, made the amendment effective on the first day of the first month which begins on or after the sixtieth day after the date of enactment of this act (June 1, 1956).

CROSS REFERENCE

1956—For provisions regarding separability clause of the act of March 31, 1956, see note under section 47-1551.

Applicability to officers or agencies of District. See note under section 47-2601.

1956—For authority of commissioners to make rules and regulations in regard to act of March 31, 1956, see section 47-1595a.

NOTES TO DECISIONS

PROFESSIONAL OR PERSONAL SERVICE

Sales to newspaper of mats bearing impressions of current sequence of comic strips, with right to reproduce one time the work of artists who made the drawings, were sales of professional and personal services of the artists which involved transfer of title to the mats, of inconsequential value, from which drawings could be reproduced, and hence were within exemption from sales and use taxes granted professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made. *Washington Times-Herald, Inc. v. District of Columbia* (1954, 94 U. S. App. D. C. 154, 213 F. 2d 23).

PROPERTY ACQUIRED FOR PURPOSE OF RESALE

Cartons, which bottling companies delivered to customers with bottled drinks, upon which no credit or refund for return was allowed, and which were not drawn back into more or less constant use by companies, were property "acquired for purpose of resale" within meaning, as construed in Regulations, of District of Columbia statute which exempts from use tax property acquired for purpose of resale. *District of Columbia v. Seven-Up Washington, Inc., District of Columbia v. Dr. Pepper Bottling Co., of Washington, D. C., Inc., District of Columbia v. Pepsi-Cola Bottling Co. of Washington, District of Columbia v. Pfan, District of Columbia v. Rock Creek Ginger Ale Co., Inc.* (1954, 93 U. S. App. D. C. 272, 214 F. 2d 197, certiorari denied June 1, 1954, 74 S. Ct. 851).

Where bottling companies bought bottles and cases and sold them, filled with beverages, at prices smaller than the cost of the bottles and cases, in expectation that bottles and cases would be returned for refund, the bottles and cases were not "acquired for purpose of resale" within meaning of statute excluding from use tax property purchased for resale. *Id.*

Cartons which bottling companies delivered to customers with bottled drinks were not used or incorporated as material or part of other property to be produced for sale, within meaning of District of Columbia statute excluding from use tax property purchased for use as material or part of other tangible personal property to be produced for sale. *Id.*

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

§ 47-2702. Imposition of tax.

Beginning on and after August 1, 1949, there is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and services sold or purchased at retail sale. The tax hereby imposed shall be at the rate of 2 per centum of the sale price of the tangible personal property or services rendered or sold, except that the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the sales price of such sales. (May 27, 1949, 63 Stat. 126, ch. 146, title II, § 212; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1307.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by adding the exception at the end of the last sentence providing for a 1 percent tax on food to be consumed off the premises where the food is sold.

The provisions of the amendment were made effective on August 1, 1954, by the terms of section 1309 of the act.

NOTES TO DECISIONS

CONSTITUTIONALITY

The imposition of a new tax or increase in the rate of an old one is one of the usual hazards of business, and it does not ordinarily impair the obligation of a pre-existing contract. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882, certiorari denied, Nov. 30, 1953, 346 U. S. 900).

PROPERTY ACQUIRED FOR RESALE

Under District of Columbia statute excluding from use tax property which is acquired for purpose of resale, property is not excluded simply because it is resold, but it is excluded only when it is purchased specifically for the purpose of resale. *District of Columbia v. Seven-Up Washington, Inc., District of Columbia v. Dr. Pepper Bottling Co., of Washington, D. C., Inc., District of Columbia v. Pepsi-Cola Bottling Co. of Washington, District of Columbia v. Pfan, District of Columbia v. Rock Creek Ginger Ale Co., Inc.* (1954, 93 U. S. App. D. C. 272, 214 F. 2d 197, certiorari denied June 1, 1954, 74 S. Ct. 851).

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

TAXABLE EVENT

Where personal property was purchased by contractor subsequent to passage of District of Columbia Sales Tax Act, fact that construction contracts with reference to which purchases were made had been entered into before passage of the Act did not absolve contractor from payment of the use tax, since it is the purchase or use itself, and not the signing of the contracts ultimately necessitating the purchase, which is the taxable event. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882).

§ 47-2705. Payment of tax by purchaser.

If a purchaser has not reimbursed for the tax such vendors or retailers as are required or authorized to pay the tax, as the case may be, such purchaser shall file a return as hereinafter provided and pay to the Collector a tax at the rates provided in section 47-2602 on the sales prices of property and services purchased at retail sale. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 215; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1308.)

AMENDMENTS

1954—The act of May 18, 1954, amended the section by deleting the words "2 per centum of the total" and substituting the words "a tax at the rates provided in section 125 of title I of this Act on the". Section 125 is found in the D. C. Code as section 47-2602.

The amendment was made effective August 1, 1954, by the terms of section 1309 of the act.

NOTES TO DECISIONS

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards or premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

§ 47-2706. Exemptions.

NOTES TO DECISIONS

CONTRACTS PRIOR TO DATE OF APPROVAL OF ACT

Provision of District of Columbia Sales Tax Act exempting sales of goods made pursuant to contracts entered into before date of approval of Act, if there is contract in writing which imposes unconditional liability on part of purchaser to buy goods covered at fixed price and on vendor to deliver a definite quantity of such goods at contract price, did not exempt purchases made by contractor pursuant to construction contracts with United States and District of Columbia, when there was no proof of any contracts in writing, other than the three construction contracts, since relationships between parties to those contracts were not those of purchasers and vendors. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882, certiorari denied, Nov. 30, 1953, 346 U. S. 900).

RETAIL SALES DEFINED

Taxpayers' sales, not for resale, to industrial concerns, concessionaires, churches, clubs and business places of goods to be distributed as prizes, incentive awards of premiums were not "retail sales" within purview of excise tax statute. *Gellman Brothers v. United States* (1956, U. S. App. Eighth Circuit, 235 F. 2d 87).

SALES TO UNITED STATES OR DISTRICT

Provision of District of Columbia Sales Tax Act exempting sales to the United States or District or any instrumentality thereof, did not exempt from taxation purchases made by private contractor of materials and supplies for use in construction contracts with United States and District of Columbia, since when contractor purchased such materials, neither it nor its vendor was making sales of tangible personal property to the United States or the District. *John McShain, Inc. v. District of Columbia* (1953, 92 U. S. App. D. C. 358, 205 F. 2d 882).

Government regulations pertaining to Sales and Use Taxes under District of Columbia Sales Tax Act, declaring that where contractor enters into construction contract with United States or District, contractor may purchase such materials and supplies as are to be physically incorporated in and become real property without payment of tax, means that the material must be physically present or incorporated in the structure, and it does not exempt from taxation products consumed in the course of construction. *Id.*

§ 47-2707. Collection of tax.

NOTES TO DECISIONS

PRIORITY

The District of Columbia local statute giving District a preferred claim for sales and use taxes when assignment is made for benefit of creditors, being a more specific and more limited enactment, creates an exception to general federal statute giving priority to the United States in payment of claims against insolvent debtor, and, hence, District's claim for unpaid sales and compensating use taxes was entitled to priority over tax claim of United States in respect to payment out of assets in hands of assignees for benefit of creditors. *United States v. Harry Saidman, Trustee, etc.* (1956, 97 U. S. App. D. C. 344, 231 F. 2d 503).

Chapter 28.—CIGARETTE TAX

Sec.

47-2811. Redemption of cigarette or alcoholic-beverage tax stamps.

§ 47-2802. Imposition of tax.

(a) There shall be levied, collected, and paid on all cigarettes sold in the District by licensed wholesalers, licensed retailers, or by licensed vending-machine operators, to consumers, a tax at the rate of 2 cents on each twenty cigarettes or fractional

part thereof, such tax to be levied, collected, and paid once only on cigarettes sold as aforesaid.

(May 27, 1949, 63 Stat. 138, ch. 146, § 604; May 18, 1954, 68 Stat. 115, ch. 218, § 901.)

AMENDMENTS

1954—The act of May 18, 1954, struck "1 cent" and substituted "2 cents" in subsection (a) of the section effective July 1, 1954. The provision concerning effective date was as follows:

"SEC. 905. The provisions of this title shall become effective on the first day of the first month succeeding the thirtieth day after the approval of this Act."

TRANSITORY PROVISIONS RELATING TO THE 1954 AMENDMENT

In order to provide for the initial application of the amendments of the act of May 18, 1954, sections 902 and 903 provided the method for making adjustments for tax stamps and packages of cigarettes in the hands of dealers on the effective date of those amendments.

"SEC. 902. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps denoting payment of cigarette taxes affixed to packages of cigarettes held or possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps and the amount of tax imposed by the District of Columbia Cigarette Tax Act as amended by this title.

"SEC. 903. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps held or possessed by such licensee or anyone for him which were not affixed to packages of cigarettes at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, surrender such stamps to the Collector of Taxes. The Collector of Taxes shall credit the amount of tax represented by the stamps surrendered against new stamps purchased by such licensees. In lieu of the credit allowed for surrendering stamps as provided in this section, the licensee shall be entitled to a refund of the amount of tax represented by the stamps surrendered as an overpayment of tax in the same manner and to the same extent as provided in section 4 of the Act of July 10, 1952 (66 Stat. 543, 546, ch. 649): *Provided*, That the requirement that the amount of refund shall not exceed the portion of tax paid during the two years immediately preceding the filing of the claim for refund shall not be applicable."

The act made this provision for violation of the provisions of title IX (sections 901 to 905 of the Act).

"SEC. 904. Any violation of the provisions of this title shall constitute a violation under the District of Columbia Cigarette Tax Act and regulations promulgated pursuant thereto."

CROSS REFERENCE

1954—Commissioners' authority to make regulations, see § 43-1618.

§ 47-2811. Redemption of cigarette or alcoholic-beverage tax stamps.

(a) Where any cigarette or alcoholic-beverage tax stamps issued under District of Columbia tax laws have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, the amount paid for such stamps may be refunded within the limit of appropriations therefor, or allowed as a credit on

the purchase of new stamps. No such refund or allowance shall be made unless the owner of such stamps shall file a written claim therefor with the Commissioners of the District of Columbia or their designated agent within the time prescribed in this section and unless the Commissioners or their designated agent upon receipt of satisfactory evidence of the facts, and subject to regulations prescribed by the Commissioners, certify that such refund or allowance is just and equitable.

(b) No refund or allowance shall be made in any case (1) until the stamps so spoiled or rendered useless shall have been returned to the Commissioners or their designated agent, or (2) until satisfactory proof has been made to the Commissioners or their designated agent showing the reason why the same cannot be returned, or (3), if so required by the Commissioners or their designated agent, unless the person presenting the same can satisfactorily trace the history of said stamps from their issuance to the filing of his claim as aforesaid: *Provided*, That no refund shall be made in those cases where the owner may be made whole by allowing him a credit on the purchase of new stamps: *And provided further*, That no claim for a refund, or allowance for such stamps, shall be allowed unless presented within six months after the stamps have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or, in the case of stamps for which the owner may have no use, within six months from the date of purchase thereof, except that as to stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, prior to June 3, 1954, a claim for a refund or allowance for credit may be filed within six months after June 3, 1954. (June 3, 1954, 68 Stat. 169, ch. 252, §§ 1, 2.)

CROSS REFERENCES

Beverage tax stamps, § 25-124.

Chapter 29.—ADMISSION TO LICENSED PLACES—
POSTING OF PRICE SCALE

- Sec.
- 47-2901. Distinction because of race or color unlawful in licensed places of amusement—Payment of admissions—Penalty.
- 47-2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.
- 47-2903. Amendment of penalty provisions in section 47-2901.
- 47-2904. Recovery of fine—Payment of one-half to informer.
- 47-2905. Posting of price scale.
- 47-2906. Failure to post price scale, penalty.
- 47-2907. Keepers or proprietors of restaurants, hotels, barber shops, bathing houses, ice-cream saloons, and soda fountains required to serve well-behaved persons.
- 47-2908. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to post price list.
- 47-2909. Transmittal of price list to Assessor.
- 47-2910. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to serve well-behaved persons at common prices.

- Sec.
- 47-2911. Failure to post or file price list—Charging other or greater price—Failure to serve any well-behaved person—Penalty—Enforcement.

§ 47-2901. Distinction because of race or color unlawful in licensed places of amusement—Payment of admissions—Penalty.

From and after the passage of this act it shall not be lawful for any person or persons who shall have obtained a license from this Corporation for the purpose of giving a lecture, concert, exhibition, circus performance, theatrical entertainment, or for conducting a place of public amusement of any kind, to make any distinction on account of race or color, as regards the admission of persons to any part of the hall or audience-room where such lecture, concert, exhibition, or other entertainment may be given: *Provided*, That any person applying shall pay the regular price charged for admission to such part of the house as he or she may wish to occupy, and shall conduct himself or herself in an orderly and peaceable manner, while on the premises; and any person or persons offending herein shall forfeit and pay to this Corporation for each offense a fine of not less than ten nor more than twenty dollars to be collected and applied as are other fines. That all acts or parts of acts inconsistent with this act be, and the same are hereby repealed. (June 10, 1869, ch. 36, p. 22, Corp. Laws of Wash., 66th Council, §§ 1, 2.)

AMENDMENTS

Section 3 of act of March 7, 1870, classified to section 47-2903, increased the penalty provided in this section to a minimum of \$50, as provided in section 47-2902 (b).

CROSS REFERENCE

See order No. 56-874, dated May 3, 1956, issued by Commissioners of the District of Columbia extending the area of applicability of the section so as to make it apply in the District of Columbia outside the limits of the city of Washington.

NOTES TO DECISIONS

BOWLING ALLEY A PLACE OF "PUBLIC AMUSEMENT"

A bowling alley was a place of "public amusement" within act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind from making any distinction on account of race or color. *Central Amusement Co., Inc. v District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

CIVIL ACTION NOT MAINTAINABLE

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *L. M. Tynes v. P. P. Gogos* (D.C. Mun. App. 1958, 144 A 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

DUE PROCESS

Fact that act adopted by corporation of city of Washington prohibiting persons who have obtained license for conducting place of public amusement of any kind from making any distinction on account of race or color was applicable only to that part of the District of Columbia formerly included in the cities of Washington and

Georgetown, did not render act invalid as violation of due process. *Central Amusement Co., Inc. v. District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

"PERSONS" APPLIES TO CORPORATIONS

The word "persons", as used in act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind, from making any distinction on account of race or color, applies to corporations as well as natural persons. *Central Amusement Co., Inc. v. District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

§ 47-2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.

(a) That from and after the passage of this act it shall not be lawful for the keeper, proprietor, or proprietors of any licensed hotel, tavern, restaurant, ordinary, sample-room, tippling-house, saloon, or eating-house, to refuse to receive, admit, entertain, and supply any quiet and orderly person or persons, or to exclude any person or persons on account of race or color.

(b) That if the keeper, proprietor, or proprietors of any licensed hotel, tavern, restaurant, ordinary, sample-room, tippling-house, saloon, or eating-house, or any agent acting for him or them, shall violate or offend against the provisions of this act, he or they shall be subject to a fine of not less than fifty dollars for each violation thereof, to be recovered in an action of debt, in the name of the Mayor, Board of Alderman, and Board of Common Council of the city, on information filed before any police magistrate. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, §§ 1, 2.)

NOTES TO DECISIONS

CIVIL ACTION NOT MAINTAINABLE

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *L. M. Tynes v. P. P. Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

§ 47-2903. Amendment of penalty provisions in Section 47-2901.

That in lieu of the penalties provided in section 47-2901 for the offense therein mentioned, the penalty mentioned in section 47-2902 (b) is hereby substituted, and hereafter shall be applicable to and enforced, as herein provided, for any violation of section 47-2901. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, § 3).

§ 47-2904. Recovery of fine—Payment of one-half to informer.

That after the final conviction of any party for the violation of any of the provisions of sections 47-2901 to 47-2903, and the recovery of the fine, a sum equal in amount to one-half of such fine shall be

paid, and warrant drawn in the usual form out of the general fund, to the party who may have been the informer in any such case. That all acts or parts of acts that are inconsistent with the provisions of this act are hereby repealed. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, §§ 4, 5.)

§ 47-2905. Posting of price scale.

Keepers or owners of restaurants, eating-houses, bar-rooms, or ice-cream saloons, or soda-fountains, at which food, refreshments or drinks are sold, or keepers of barber shops and bathing houses, must put in a conspicuous place in their restaurant, eating-houses, ice-cream saloons, or places for the sale of soda water, a scale of the prices for which the different articles they have for sale will be furnished. (Leg. Assem., June 20, 1872, § 1.)

REPEAL

United States Court of Appeals District of Columbia Circuit, in *John R. Thompson Co., Inc. v. District of Columbia, District of Columbia v. John R. Thompson Co., Inc.* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 Act of the Legislative Assembly of District of Columbia, with respect to restaurants, repealed the act of 1872.

NOTES TO DECISIONS

REPEAL

The 1873 Act of Legislative Assembly of District of Columbia making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals 1872 anti-discrimination law insofar as it applies to restaurants in District of Columbia. *John R. Thompson Co., Inc. v. District of Columbia, District of Columbia v. John R. Thompson Co., Inc.* (1954, 93 U. S. App. D. C. 373, 214 F. 210).

§ 47-2906. Failure to post price scale, penalty.

Persons violating the provisions of section 47-2905 are to be deemed guilty of misdemeanor, and, upon conviction in a court having jurisdiction, are to be fined by the court not less than twenty dollars, and not more than fifty dollars. (Leg. Assem. June 20, 1872, § 2.)

REPEAL

United States Court of Appeals District of Columbia Circuit, in *John R. Thompson Co., Inc. v. District of Columbia, District of Columbia v. John R. Thompson Co., Inc.* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 Act of the Legislative Assembly of District of Columbia, with respect to restaurants, repealed the Act of 1872.

NOTES TO DECISIONS

AUTHORITY TO LEGISLATE

"Rightful subjects of legislation" within District of Columbia Organic Act of 1871 extending with certain exceptions the legislative power of District to all rightful subjects of legislation within District consistent with Federal Constitution and provisions of Organic Act is as broad as police power of state so as to include a law prohibiting discriminations against Negroes by owners and managers of restaurants in District of Columbia. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

REPEAL

The 1873 Act of Legislative Assembly of District of Columbia making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals 1872 antidiscrimination law insofar as it applied to restaurants in District of Columbia. *John R. Thompson Co., Inc. v. District of Columbia, District of Columbia v. John R. Thompson Co., Inc.* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210).

The 1874 Act abolishing Legislative Assembly of District of Columbia and the 1878 Organic Act precluded repeal of 1872 and 1873 antidiscrimination laws of Legislative Assembly except by Act of Congress. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

The 1872 and 1873 antidiscrimination laws governing restaurants in District of Columbia are "police regulations" and "acts relating to municipal affairs" within District of Columbia Code of 1901 saving such regulations and acts from repeal. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

§ 47-2907. Keepers or proprietors of restaurants, hotels, barber shops, bathing houses, ice-cream saloons, and soda fountains required to serve well-behaved persons.

Any restaurant keeper or proprietor, any hotel keeper or proprietor, proprietors or keepers of ice-cream saloons or places where soda-water is kept for sale, or keepers of barber shops and bathing houses, refusing to sell or wait upon any respectable well-behaved person, without regard to race, color, or previous condition of servitude, or any restaurant, hotel, ice-cream saloon or soda fountain, barber shop or bathing-house keepers, or proprietors, who refuse under any pretext to serve any well-behaved, respectable person, in the same room, and at the same prices as other well-behaved and respectable persons are served, shall be deemed guilty of a misdemeanor, and upon conviction in a court having jurisdiction, shall be fined one hundred dollars, and shall forfeit his or her license as keeper or owner of a restaurant, hotel, ice-cream saloon, or soda fountain, as the case may be, and it shall not be lawful for the Assessor [Register] or any officer of the District of Columbia to issue a license to any person or persons, or to their agent or agents, who shall have forfeited their license under the provisions of this act, until a period of one year shall have elapsed after such forfeiture. (Leg. Assem., June 20, 1872, § 3.)

REPEAL

United States Court of Appeals District of Columbia Circuit, in *John R. Thompson Co., Inc. v. District of Columbia, District of Columbia v. John R. Thompson Co., Inc.* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 Act of the Legislative Assembly of District of Columbia, with respect to restaurants, repealed the act of 1872.

NOTES TO DECISIONS

CIVIL ACTION NOT MAINTAINABLE

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *L. M. Tynes v. P. P. Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

REPEAL

The 1873 Act of Legislative Assembly of District of Columbia making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals 1872 antidiscrimination law insofar as it applied to restaurants in District of Columbia. *John R. Thompson Co., Inc. v. District of Co-*

lumbia, District of Columbia v. John R. Thompson Co., Inc. (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210).

§ 47-2908. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to post price list.

The proprietor or proprietors, or keeper or keepers, of every licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, or establishment in the District of Columbia, shall put up, or cause to be kept up, and to be regularly kept up, or cause to be kept up, in two conspicuous places in the chief room or rooms of his, her, or their restaurant, eating-house, bar-room, ice-cream saloon, or soda-fountain room, and in one conspicuous place in each small or private room, if any, used in connection with said restaurant, eating-house, bar-room, sample-room, ice-cream saloon, and soda-fountain room, for the accommodation of guests, visitors, or customers thereat, printed cards, or papers, on which shall be distinctly printed the common or usual price for which each article or thing kept in any of said places or establishments to be eaten or drank therein is or may be commonly sold, or the price or prices for which the articles or things are or may be commonly or usually furnished to persons calling for, desiring, or receiving the same or any part or parts thereof, and no greater price or prices than those mentioned or contained on said cards or printed papers shall be asked for, demanded, or received from any person or persons for any of the articles or things kept in any manner for sale in any of the places or establishments aforesaid, either by said proprietor or proprietors, keeper or keepers, or by their agents, employes, or any one acting in any manner for them. (3 Leg. Assem., June 26, 1873, ch. 46, § 1.)

NOTES TO DECISIONS

CONSTRUCTION

Act of 1873 of the Legislative Assembly for the District of Columbia making it a misdemeanor for restaurant proprietors and proprietors of similar establishments to refuse to serve any well-behaved, respectable person without regard to race or color, was not repealed by any act of Congress. *District of Columbia v. John R. Thompson Co., Inc.* (D. C. Mun. App. 1951, 81 A. 2d 249).

REPEAL

The District of Columbia Code of 1901 repealing general and permanent acts of Legislative Assembly of District of Columbia used words "general and private acts" as contrasted to statutes which are private, special or temporary. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

§ 47-2909. Transmittal of price list to Assessor.

On or before the first day of November in each year the proprietor or proprietors, keeper or keepers, of each licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, and soda-fountain room or establishment in said District, as aforesaid, shall transmit to the Assessor [Register] of said District a printed copy of the usual or common price or prices of articles or things kept for sale by him, her, or them, as aforesaid, which shall be filed by the Assessor [Register] in his office, and unless he is notified of changes therein, the copy transmitted

and filed in said office may be used in any case or proceeding under this act as prima facie evidence of the common or usual prices charged for the articles or things mentioned therein by the proprietor or proprietors, keeper or keepers, of any of the places or establishments aforesaid, and in a failure of any proprietor or proprietors, keeper or keepers, to transmit the copy aforesaid, the Assessor [Register] shall notify such person of such failure, and require such copy to be forthwith transmitted to him. (3 Leg. Assem., June 26, 1873, ch. 46, § 2.)

§ 47-2910. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to serve well-behaved persons at common prices.

The proprietor or proprietors, keeper or keepers, of any licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room shall sell at and for the usual or common prices charged by him, her, or them, as contained in said printed cards or papers, any article or thing kept for sale by him, her, or them to any well-behaved and respectable person or persons who may desire the same, or any part or parts thereof, and serve the same to such person or persons in the same room or rooms in which any other well-behaved person or persons may be served or allowed to eat or drink in said place or establishment: *Provided*, That persons of different sexes shall not be accommodated in the same room or rooms unless they accompany each other, or call for any articles or things together, or unless said room or rooms are ordinarily used indiscriminately by persons of both sexes. (3 Leg. Assem., June 26, 1873, ch. 46, § 3.)

NOTES TO DECISIONS

CIVIL ACTION NOT MAINTAINABLE

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *L. M. Tynes v. P. P. Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

CONSTRUCTION

The 1873 Act of Legislative Assembly of District of Columbia making it a crime for restaurateurs and others to discriminate against person or to refuse to serve him on account of race or color has survived all subsequent changes in Government of District and remains a part of governing body of laws applicable to District. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

§ 47-2911. Failure to post or file price list—Charging other or greater price—Failure to serve any well-behaved person—Penalty—Enforcement.

If the proprietor or proprietors, keeper or keepers, of any place or establishment, as aforesaid, shall neglect or refuse to put up printed cards or papers of prices as provided for in section 47-2908, or shall refuse to send a copy or duplicate to the Assessor [Register,] as provided in section 47-2909 or shall

place or cause to be placed on said card or paper, or permit to be placed thereon any price or prices other or greater than that for which any article or thing is, or may be, usually and commonly sold or furnished by him, her, or them, or different from or more than is usually or commonly demanded or received therefor by him, her or them, or by his, her, or their authority or direction, or shall demand or receive in any manner, or under any circumstances, or for any reason or pretence, in person or by any employee or agent, from any person or persons aforesaid, any sum or prices different or greater than is contained on said cards or papers, or than is usually and commonly asked or received for any article or thing kept for sale as aforesaid, or shall refuse or neglect, in person or by his, her, or their employe or agent, directly or indirectly, to accommodate any well-behaved and respectable person as aforesaid in his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, or shall refuse or neglect to sell at the common and usual prices aforesaid in and at his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, to any such person or persons therein at said prices, any article or thing kept therein and in the room or rooms in which such articles or things are ordinarily sold and served or allowed to be eaten or drank, or shall at any time or in any way or manner, or under any circumstances, or for any reason, cause, or pretext, fail, decline, object, or refuse to treat any person or persons aforesaid as any other well-behaved and respectable person or persons are treated at said restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, he, she, or they, on conviction of a disregard or violation of any provision, regulation, or requirement of sections 47-2908, 47-2909, 47-2910, and 47-2911 or any part of sections 47-2908, 47-2909, 47-2910, and 47-2911 contained, be fined one hundred dollars, and forfeit his, her, or their license; and it shall not be lawful for any officer of the District to issue a license to any person or persons, or their agent or agents, whose license may be forfeited under the provisions of sections 47-2908, 47-2909, 47-2910, and 47-2911 for one year after such forfeiture: *Provided*, That the provisions of sections 47-2908, 47-2909, 47-2910, and 47-2911 shall be enforced by information in the Police Court of the District of Columbia, filed on behalf thereof by its proper attorney or attorneys, subject to appeal to the Criminal Court of the District of Columbia in the same manner as is now or may be hereafter provided for the enforcement of the District fines and penalties under ordinances and law. (3 Leg. Assem., June 26, 1873, ch. 46, § 4.)

NOTES TO DECISIONS

CIVIL ACTION NOT MAINTAINABLE

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *L. M. Tynes v. P. P. Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of a restaurant reserved for danc-

ing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

CONSTRUCTION

The 1873 District of Columbia antidiscrimination regulatory law prescribing in terms of civil rights the duties of restaurateurs to members of public has not been modified, altered or repealed by non-use and administrative practice and by exercise for 75 years of licensing authority over restaurants without regard to equal service requirements. *District of Columbia v. John R. Thompson Co.* (1953, 346 U. S. 100, 73 S. Ct. 1007).

PROVISIONS AGAINST DISCRIMINATION

Act of 1873 of the Legislative Assembly for the District of Columbia making it a misdemeanor for restaurant proprietors and proprietors of similar establishments to refuse to serve any well-behaved respectable person without regard to race or color, was not repealed by any act of Congress. *District of Columbia v. John R. Thompson Co., Inc.* (D. C. Mun. App. 1951, 81 A. 2d 249).

Chapter 30.—CLOSING OUT SALES

Sec.

47-3001. "Closing-out sales" defined.

47-3002. "Closing-out sales" prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

47-3003. Purchase of new stocks for use on "closing-out sales" prohibited—Presumptions.

47-3004. Addition of new stocks during "closing-out sales" prohibited.

47-3005. Continuation of sale beyond termination date prohibited—Extension of termination date—Continuation of business at new location prohibited.

47-3006. Penalty for conducting false "closing-out sales" and for violation of this chapter—Corporation counsel to conduct prosecutions.

47-3007. Provisions of chapter do not apply to public officials.

47-3008. Jurisdiction of District Court to enjoin violations of the provisions of this chapter.

47-3009. Regulations.

47-3010. Commissioners authority not affected by provisions of this chapter—Delegation of authority.

§ 47-3001. "Closing-out sales" defined.

For the purposes of this chapter, (1) "closing-out sale" shall mean and include any sale in connection with which there is any representation by the person conducting such sale that the sale is being conducted, or is required or compelled to be conducted, for reasons of economic or business distress, inability to continue business at the same location, or the age or health of the owner or owners of the business, and the term "closing-out sale" shall include but not be limited to, all sales advertised, represented, or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; and (2) "person" shall mean and include individuals, partnerships, voluntary associations, and corporations. (Sept. 1, 1959, 73 Stat. 449, Pub. L. 86-219, § 1.)

EFFECTIVE DATE

Section 10 of the act of September 1959, cited to text, provides as follows: This Act shall become effective sixty days after the date of its enactment.

§ 47-3002. Closing out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

(a) No person shall advertise or offer for sale in the District of Columbia a stock of goods, wares, or merchandise under the description of closing-out sale, or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, unless he shall have obtained a license to conduct such sale from the Commissioners of the District of Columbia. The applicant for such a license shall make an application therefor, in writing and under oath at least 14 days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, a complete inventory of the goods, wares, or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares, or merchandise to be sold.

(b) If the Commissioners shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the Commissioners shall issue a license, upon the payment of a fee of \$100 therefor, together with a bond, payable to the District of Columbia in the penal sum of \$1,000, conditioned upon compliance with this chapter, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale shall be exempted from the payment of the fee and the filing of the bond herein provided.

(c) The Commissioners shall endorse upon such application the date of its filing, and shall preserve the same as a record of office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury. (Sept. 1, 1959, 73 Stat. 449, Pub. L. 86-219, § 2.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3003. Purchase of new stocks for use on "closing-out sales" prohibited—Presumptions.

No person in contemplation of a closing-out sale under a license as provided for in section 47-3002 shall order any goods, wares, or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares, or merchandise within 60 days prior to the filing of application for a license to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86-219, § 3.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3004. Addition of new stocks during "closing-out sales" prohibited.

No person carrying on or conducting a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, under a license as provided in section 47-3002 shall, during the continuance of such sale, add any goods, wares, or merchandise to the stock inventoried in his original application for such license, and no goods, wares, or merchandise shall be sold at or during such sale, excepting the goods, wares, or merchandise described and inventoried in such original application. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86-219, § 4.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3005. Continuation of sale beyond termination date prohibited—Extension of termination date—Continuation of business at new location prohibited.

No person shall conduct a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise beyond the termination date specified for such sale, except that an extension may be authorized upon proper showing of need; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the District of Columbia where the inventory for such sale was filed; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86-219, § 5.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3006. Penalty for conducting false "closing-out sales" and for violation of this chapter—Corporation counsel to conduct prosecutions.

(a) Any person who shall advertise, hold, conduct, or carry on any sale of goods, wares, or merchandise under the description of closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, contrary to the provision of this chapter, or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$300 or imprisonment for ninety days or both.

(b) Prosecutions for violations of this chapter and regulations promulgated under the authority of this chapter shall be conducted in the name of the District of Columbia by the Corporation Counsel or any

of his assistants. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86-219, § 6.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3007. Provisions of chapter do not apply to public officials.

The provisions of this chapter shall not apply to public or court officers, or to any other person or persons acting under the license, direction, or authority of any court, local or Federal, selling goods, wares, or merchandise in the course of their official duties. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86-219, § 7.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3008. Jurisdiction of District Court to enjoin violations of the provisions of this chapter.

Upon complaint of any person, the United States District Court for the District of Columbia shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provisions of this chapter. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86-219, § 8.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3009. Regulations.

The Commissioners are authorized to promulgate regulations to carry out the purposes of this chapter including, without limitation, regulations limiting the period of time a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise may be conducted, subject to extension as authorized by section 47-3005: *Provided*, That no such regulation shall be put in effect until after a public hearing has been held thereon. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86-219, § 9.)

EFFECTIVE DATE

See note to section 47-3001.

§ 47-3010. Commissioners authority not affected by provisions of this chapter—Delegation of authority.

Nothing in this chapter shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824.) The performance of any function vested by this Act in the Commissioners of the District of Columbia or in any office or agency under the jurisdiction and control of said Commissioner may be delegated by said Commissioners in accordance with section 3 of such plan. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86-219, § 11.)

EFFECTIVE DATE

See note to section 47-3001.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chapter 1.—GENERAL PROVISIONS

Sec.

49-101—49-109. Repealed.

§§ 49-101 to 49-109. Repealed. July 30, 1947, 61 Stat. 640, ch. 388, § 2.

Sections 49-101 to 49-109 inclusive, relating to the District of Columbia Code and its preparation, publication and distribution were based on the acts of May 29, 1928, 45 Stat. 1007, ch. 910, §§ 2, 4, 5, 6, 7, and 8, and of March 2, 1929, 45 Stat. 1540, ch. 586, §§ 1, 4, and 7. These matters are now covered by sections 201, 202, 204, 205, 208, 209, 210, 211, and 212 of title 1 of the U. S. Code.

§ 49-110. Repealed. July 2, 1958, 72 Stat. 293. Pub. L. 85-491, § 3.

Section dealt with the authority of the Commissioners to exchange and sell copies of building, police, plumbing, and municipal regulations. This subject is now covered by § 1-244 (i) (1) (2).

Chapter 3.—LAWS REMAINING IN FORCE

§ 49-301 [1: 21]. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

NOTES TO DECISIONS

BRITISH STATUTES

Congressional statute providing that all consistent common law and British statutes in force in Maryland at time of cession of District shall remain in force, gives to the British laws only that force which they previously had in this tract of territory under the laws of Maryland. *Manoukian v. Tomasian* (1956, 99 U. S. App. D. C. 57, 237 F. 2d 211).

Under congressional statute giving force to all common law and British statutes which are not inconsistent with or replaced by subsequent legislation of Congress, statute must be given the same force and effect, and no more, than any other British statute on July 4, 1776. *Id.*

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COMMON LAW

The provision of the District of Columbia Code of 1901 stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, intends that the system of the common law unwritten and dynamic not in its then-current pronouncements on specific problems, should remain in force. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Williams et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Stone et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1950, 87 U. S. App. D. C. 351, 187 F. 2d 357).

The provision of the District of Columbia Code of 1901 stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force established the common law as the law in District of Columbia but did not purport to freeze that law into its 1901 or 1908 mold so that it could not expand to meet the changes of a dynamic society. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Williams et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Stone et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1950, 87 U. S. App. D. C. 351, 187 F. 2d 357).

The common law, particularly as derived from the common law of Maryland, is the fundamental part of the law in the District of Columbia to which court will look in absence of statutory enactment. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Williams et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.*, *Stone et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1950, 87 U. S. App. D. C. 351, 187 F. 2d 357).

RENUNCIATION OF WILL

Under District of Columbia Code, a widow who renounced a will made by her husband, where there were no intervening heirs, was entitled to whole of her husband's personal estate. *Wegenast v. Pheylen* (1951, 98 F. Supp. 371).

Parallel Reference Tables

ACTS OF THE COUNCILS OF THE CORPORATION OF THE CITY OF WASHINGTON

Date	Page	Chapter	Section	Council	D. C. Code Supp.	Date	Page	Chapter	Section	Council	D. C. Code Supp.
1869						1870					
June 10----	22	36	1, 2	66th	47-2901.	Mar. 7-----	22	42	1, 2	67th	47-2902.
							22	42	3	67th	47-2903.
							22	42	4, 5	67th	47-2904.

ACTS OF THE LEGISLATIVE ASSEMBLY OF THE DISTRICT OF COLUMBIA

Date	Page	Chapter	Section	D. C. Code Supp.	Date	Page	Chapter	Section	D. C. Code Supp.
1872					1873				
June 20--	65	-----	1	47-2905.	June 26--	116	46	1	47-2908.
	65	-----	2	47-2906.		116	46	2	47-2909.
	65, 66	-----	3	47-2907.		116	46	3	47-2910.
						116	46	4	47-2911.

CODE OF 1901

Mar. 3, 1901, 31 Stat. at Large, Chapter 854

Page	Section	D. C. Code Supp.	Page	Section	D. C. Code Supp.	Page	Section	D. C. Code Supp.
-----	546-A	42-101.	-----	546-F	42-106.	-----	1104A (d)(e)	15-317.
-----	546-B	42-103.	-----	546-G	42-107.	-----	(f)	
-----	546-C	42-102.	-----	1104A (a)	15-314.	-----	1104A (g)	15-318.
-----	546-D	42-104.	-----	1104A (b)	15-315.	-----	1104A (h)(i)	15-319.
-----	546-E	42-105.	-----	1104A (c)	15-316.	-----	(j)	

Table 1.—STATUTES INCLUDED

THIS TABLE SUPPLEMENTING 1951 CODE, SHOWS WHERE ACTS OF CONGRESS TO JANUARY 5, 1960, WILL BE FOUND

Statutes at Large

VOLUME 31					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1901					
Mar. 3	1340	854		927	24-301 superseded.
	1340	854		928	24-302 superseded.
	1340	854		929	24-303 superseded.
		854		546A	42-101.
		854		546B	42-102.
		854		546C	42-103.
		854		546D	42-104.
		854		546E	42-105.
		854		546F	42-106.
		854		546G	42-107.
		854		1104A	15-314.
				(a)	
				1104A	15-315.
				(b)	
				1104A	15-316.
				(c)	
				1104A	15-317.
				(d) (e)	
				(f)	
				1104A	15-318.
				(g)	
				1104A	15-319.
				(h) (i)	
				(j)	
VOLUME 34					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1906					
Apr. 14	113	1624			24-301 superseded.
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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1924					
June 6		270		1	1-1001.
		270		1	1-1002.
		270		1	1-1003.
		270		1	1-1004.
		270		1	1-1005.
		270		1	1-1006.
		270		1	1-1007.
		270		1	1-1008.
		270		1	1-1009.
		270		1	1-1010.
		270		11	1-1011.
		270		12	1-1012.
		270		13	1-1013.
1925					
Mar. 3		417			42-102.
VOLUME 44					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1926					
Apr. 30		198			1-1001.
		198			1-1002.
		198			1-1003.
		198			1-1004.
		198			1-1005.
		198			1-1006.
		198			1-1007.
		198			1-1008.
		198			1-1009.
		198			1-1010.
VOLUME 45					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1928					
May 24		726			1-1001.
		726			1-1002.
		726			1-1003.
		726			1-1004.
		726			1-1005.
		726			1-1006.
		726			1-1007.
		726			1-1008.
		726			1-1009.
		726			1-1010.
May 29	1006	908		26	36-228.
VOLUME 47					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1932					
July 8		465		18	22-3217.
VOLUME 48					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1934					
Mar. 2		38		1	1-1012.
June 4	876	389		1	43-1511.
VOLUME 50					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1937					
June 29	377	403		1	9-133.
VOLUME 52					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1938					
June 8	631	326		16	21-307 repealed.
	631	326		16	21-328 repealed.
	631	326		16	21-329 repealed.
	631	326		16	21-331 repealed.
VOLUME 53					
Date	Page	Chapter	Title	Section	D. C. Code Supp.
1939					
July 26		367	II	44	47-1544.
		367	II	45	47-1545.
		367	II	46	47-1546.
		367	II	47	47-1547.
Aug. 7	1248	546			47-1521.

Statutes at Large—Continued

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1940					
June 6	241	253	-----	1	40-604a (a).
	241	253	-----	2	40-604a (b).
	241	253	-----	3	40-604a (c).

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1941					
July 1	533	271	-----	1	7-604a.

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1942					
June 27	441	452	-----	1	32-326.
	458	452	-----	1	43-1520b.

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1943					
July 1	322	184	-----	1	31-681.
	322	184	-----	1	31-682.
	322	184	-----	1	31-609.
	324	184	-----	1	31-1117.
	324	184	-----	1	9-219.

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1944					
June 28	515	300	-----	1	31-812.
	533	300	-----	14	47-2501.

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1945					
July 2	311	217	-----		24-301 superseded.

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1947					
July 11	314	231	-----	1	1-262.
July 16	360	258	-----	1	43-1511.
July 17	379	263	-----	7	24-201 repealed.
July 30	640	388	-----	2	49-101 repealed.
	640	388	-----	2	49-102 repealed.
	640	388	-----	2	49-103 repealed.
	640	388	-----	2	49-104 repealed.
	640	388	-----	2	49-105 repealed.
	640	388	-----	2	49-106 repealed.
	640	388	-----	2	49-107 repealed.
	640	388	-----	2	49-108 repealed.
	640	388	-----	2	49-109 repealed.

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1948					
June 25	581	644	-----	3	4-301 to 4-306 repealed.

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Date	Page	Chapter	Title	Section	D. C. Code Supp.
1949					
June 29	309	279	-----	1	31-306.

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1950					
Dec. 20	1114	1141	-----	1	31-694a.
1951					
Jan. 11	1240	1225	-----	1	11-943 to 11-950 repealed.
	1240	1225	-----	2	11-951 note.
	1240	1225	-----	3	11-951.
	1240	1225	-----	4	11-952.
	1240	1225	-----	5	11-953.
	1241	1225	-----	6	11-954.
	1241	1225	-----	7	11-955.
	1241	1225	-----	8	11-956.
	1241	1225	-----	9	11-957.
	1241	1225	-----	10	11-958.
	1242	1225	-----	11	11-959.
	1242	1225	-----	12	11-960.
	1242	1225	-----	13	11-961, 22-903.
	1242	1225	-----	14	11-962.
	1243	1225	-----	15	11-963.
	1243	1225	-----	16	11-964.
	1243	1225	-----	17	11-965.
	1243	1225	-----	18	11-966.
	1243	1225	-----	19	11-967.

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1951					
Mar. 23	25	16	-----	1	45-1601.
Mar. 27	27	20	-----	1	4-904, 4-203 note 4-180 note.
	27	20	-----	2	4-904 note.
May 21	44	102	-----	1	6-1202a.
June 30	98	192	-----	1	45-1601.
	99	192	-----	1	45-1602.
	100	192	-----	1	45-1603.
	100	192	-----	1	45-1604.
	102	192	-----	1	45-1605.
	103	192	-----	1	45-1606.
	103	192	-----	1	45-1607.
	104	192	-----	1	45-1608.
	104	192	-----	1	45-1609.
	105	192	-----	1	45-1610.
	106	192	-----	1	45-1611.
	106	192	-----	1	45-1611 note.
	107	192	-----	1	45-1611 note.
	107	192	-----	1	45-1611 note.
	107	192	-----	2	45-1601 note, 45-1611 note.
July 27	124	241	-----	1	6-1301.
	124	241	-----	2	6-1302.
	124	241	-----	3	6-1303.
	124	241	-----	4	6-1304.
July 30	124	246	-----	1	47-112a.
	125	246	-----	2	47-120a.
	125	246	-----	3	47-112b, 47-120a note.
	125	246	-----	4	47-112b note, 47-120b.
	125	246	-----	5	eff. date.
	126	247	-----	1	47-2331 (c).
	126	247	-----	1	47-2331 (d).
	126	247	-----	2	47-2331 (i).
	126	248	-----	1	7-213 repealed.
	126	248	-----	1	7-322 repealed.
	126	248	-----	2	7-213a, 7-322 note.
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	491	511		2	47-2345.		646	726		1	4-132a.
	492	511		3	47-2339 note.		646	726		1	4-409a note.
July 14	532	590		1	1-254.		646	726		2	4-409a.
	532	590		2	1-255.		647	726		3	4-132 repealed.
	534	590		3	1-256.		647	726		3	4-409 repealed.
	534	590		4	1-257.		647	726		1	2-801.
	535	590		5	1-258.		650	728		2	2-801 and 2-803 notes.
	535	590		6	1-259.		650	728		3	2-803.
	538	594		1	27-114a.	July 26	650	728		1	11-756.
	578	636		1-3	Special.		676	744		1	36-601.
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	602	669		10 (b)	7-614 repealed.		976	924		3	36-603.
	609	676		Enact- ing Clause	24-601 note.		976	924		4	36-604.
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	615	676		205	33-704.		1036	970		1	2-2001.
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	616	676		208	33-707.		1037	970		4	2-2004.
	616	676	II	209	33-708.		1037	970		5	2-2005.
	617	676		210	33-709.		1038	970		6	2-2006.
	617	676		211	33-710.		1039	970		7	2-2007.
	617	676		212	33-711.		1040	970		8	2-2008.
	618	676		213	33-712.		1040	970		9	2-2009.
	618	676		214	33-701 to 33-712 notes.		1041	970		10	2-2010.
	618	676	III	301 (a)	33-401.		1041	970		11	2-2011.
	618	676		301 (b)	33-402.		1042	970		12	2-2012.
	618	676		301 (c)	33-405.		1042	970		13	2-2013.
	619	676		301 (d)	33-408.		1042	970		14	2-2014.
	619	676		301 (e)	33-409.		1043	970		15	2-2015.
	619	676		301 (f)	33-409.		1043	970		16	2-2016.
	619	676		301 (g)	33-409.		1043	970		17	2-2017.
	619	676		301 (h)	33-410.		1043	970		18	2-2018.
	620	676	III	301 (i)	33-411.		1043	970		19	26-601 note.
	620	676		301 (j)	33-412.		1049	974		20	2-2019.
	620	676		301 (k)	33-414.		1049	974		21	2-2001 note.
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	622	676		303	33-613 note.		1050	974	4	1-1204.	
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	46	85-46		1 (5)	31-725.						pealed.
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	205	85-61		7	10-103a note.		560	85-244		4(b)	18-104—Re-
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	276	85-82		1	47-2605.		560	85-244		4(d)	28-107—Re-
	276	85-82		2	47-2605 note.						pealed.
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	278	85-87		3	2-2102.		561	85-244		4(g)	18-214—Re-
	279	85-87		4	2-2103.						pealed.
	280	85-87		5	2-2104.		561	85-244		4(h)	18-215—Re-
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	281	85-87		9	2-2108.		561	85-244		7	18-212.
	281	85-87		10	2-2109.		562	85-244		8	30-201.
	281	85-87		11	2-2110.		562	85-244		9(a)	18-714.
	281	85-87		12	2-2111.		562	85-244		9(b)	18-715.
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